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Petition and Transcript of Record

Supreme Court of the United States

OCTOBER TERM, 1931

No. 339

SOUTHERN PACIFIC COMPANY, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED AUGUST 31, 1931

CERTIORARI GRANTED NOVEMBER 30, 1931

(36,153)

(36,153)

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 339

SOUTHERN PACIFIC COMPANY, Petitioner,

vs.

THE UNITED STATES, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MAY IT PLEASE THE COURT:

The petition of Southern Pacific Company respectfully shows to this Honorable Court:

A

Summary and Short Statement of the Matter Involved

This writ is sought to review the judgment of the Court of Claims in Case No. D-550, on its docket, entitled South-[fol. 2] ern Pacific Company vs. The United States, entered on June 1, 1931.

The case involves the right of the Government to 50% "land-grant" deductions, as for "troops of the United States," under the railroad land-grant Acts, and to certain additional "5%" or "3%" deductions, under special agreements therefor entered into by railroads with the United States for certain special considerations, from charges for transportation during the years 1920 to 1923, inclusive, of the following classes of persons:

1. Members of the *Officers' Reserve Corps of the Army* traveling to and from encampments under orders of the Secretary of War for the purpose of instruction and training.

2. Members of the *Nurse Corps (female)* of the Navy traveling under orders of the Secretary of the Navy.

3. *Military prisoners and guards* en route to a military prison.

4. *Engineer Officers of the War Department* traveling in connection with river and harbor work or to attend meetings of the California Debris Commission—*non-military* duties.

5. *Enlisted men accompanying the remains of deceased soldiers.*

6. *Enlisted men changing station or returning to station.*

7. *Retired officers and enlisted men.*

8. *Stranded enlisted men.*

If the 50% "land-grant" deductions do not apply, the "5%" or "3%" deductions would not apply in the present instances.

Presentation of this petition amounts to a request for application by this Honorable Court of its decisions in certain other cases to the classes of persons mentioned above, and which are additional to those already directly passed upon by it in such other cases, and to the end that certain grevious errors of the Honorable Court of Claims may be [fol. 3] corrected with regard to whether or not such classes of persons are "troops of the United States," within the meaning of the land-grant Acts, which Acts generally provide that land-grant roads shall be *"free from toll or other charge upon the transportation of any property or troops of the United States."* In *United States* v. *Union Pacific Railroad Company*, 249 U. S. 354, this Court said as to the clause carrying this provision:

"This clause was construed in Lake Superior & Mississippi R. R. Co. v. United States, 93 U. S. 442, as conferring only the free use of the roadbed as a highway. Since then, under appropriate legislation, payment has come to be made by the Government for the transportation of property and troops at rates equal to fifty per cent of those charged private parties."

A proper interpretation of the clause referred to will control in the present case.

B

Reasons Relied on for the Allowance of the Writ

1 (a). The decision of the Honorable Court of Claims insofar as it holds that members of the *Officers' Reserve Corps of the Army*—the largest and most important class involved—when traveling to and from training camps under orders of the Secretary of War, are to be regarded as "troops of the United States", within the meaning of the railroad land-grant Acts, and in the other respects, hereinafter specified, to which petitioner takes exception, contravenes the rule of construction announced by this Court in the case of The Galveston, Harrisburg & San Antonio Railway Co., 279 U. S. 401, decided May 13, 1929, holding that the Government was not entitled to land-grant deductions on the transportation of Army officers' *private* [fol. 4] *mounts*, in which case it was said, at page 404:

"The right of the United States to have the concessions and allowances in respect of transportation made by the carriers in consideration of the aid given is a continuing one. It is of great value to the Government and of course correspondingly burdensome to the carriers. *The terms of the obligation are to be sensibly and fairly read according to the words employed and not expanded or restricted by construction.* [These italics ours.] When considering another question arising under a like provision in a land grant Act, this Court said: 'It might be very convenient for the government to have more rights than it has stipulated for; but we are on a question of construction, and on this question the *usus loquendi* is a far more valuable aid than the inquiry what might be desirable.' Lake Superior & Mississippi R. R. Co. v. United States, 93 U. S. 442, 454."

1 (b). In so far as the decision of the Court of Claims relates to the status, under the railroad land-grant Acts, of members of the *Officers' Reserve Corps of the Army*, it amounts to holding that Congress can, *by mere legislative fiat*, constitute all, or any part, of the inhabitants of the United States, organized for the purpose of mere *military instruction and training, and in time of peace*, "troops of the United States," *within the meaning of the railroad land-grant Acts*, and also, in effect, by such a declaration,

override the provisions and purposes of the Constitution in respect to the organization and government of the *militia*, and deprive the States of their rightful powers with respect to the same. This is so because the Officers' Reserve Corps of the Army, like the National Guard, is merely an organization of *citizens* of the several States and Territories and the District of Columbia, for *possible, future* military service in the Army.

1 (c). The Officers Reserve Corps of the Army is merely a *potential* military force, composed of *civilians, not* soldiers, and corresponds in every important respect, so far as changing the status of a *civilian* into a *soldier*, to the *National Guard*, except that its members are exclusively under Federal control. Such control of these civilians is very meagre, however, since their *only* obligation, except in [fol. 5] time of war, or other national emergency expressly declared by Congress, is merely to attend encampments *for instruction and training*, and then for a period *not exceeding fifteen days in any one year* unless with their express consent.

1 (d). Under the construction of the term "troops of the United States"—as used in the railroad land-grant Acts, adopted by the Court of Claims—*doctors, lawyers, business men, laborers*, and *in fact all classes of civilians*, possibly even *judges*, might be brought within said term by the simple method of their entering one of the *Organized Reserve* branches, for mere military training, and for a *possible, later* military service; and this, too, when such an organization would give them at most only a restricted military status, and would not require an induction into the military service, as understood in any practical sense. Certainly such service should not be permitted to bring about a violation of a statutory agreement previously entered into with the railroads with regard to transportation of "troops of the United States", when the term had, as stated above, back at the time when the legislative contract was enacted, and the railroads were constructed, a well defined meaning of "soldiers" (249 U. S. 354), and was *primarily* and *historically* understood to mean those *soldiers* necessary to the protection of our frontier country and of those persons employed in the construction of the railroads, particularly against hostile Indians. It is un-

fortunate that the exact meaning was not written into the Acts aiding those roads in their construction, as was clearly intended and doubtless might have been accomplished by the mere asking, *but there is nothing to warrant a belief or understanding that the term "troops," as used, would ever be made to apply to "civilians", or to citizens of any kind when not engaged in military duties,* as well also at the expense of a military branch of the Government, [fol. 6] and in time of war or national emergency.

1 (e). The decision of the Court of Claims in respect of the status of members of the *Officers' Reserve Corps* is also in conflict with the principle of its own decision in the Oregon-Washington R. R. & Nav. Co. case, 60 C. Cls. 458, wherein it was held that the transportation, to military encampments and maneuvers, at *Federal* expense, of the *National Guard,* (as reorganized and more fully Federalized by the National Defense Act of June 3, 1916, ch. 134, 39 Stat. 166), and as amended, was *not* transportation of "troops of the United States" within the meaning of the railroad land-grant Acts.

1 (f). The *Officers' Reserve Corps of the Army,* and similar reserve organizations of the Navy and Marine Corps, are solely designed for the purpose of establishing *sources* from which the military forces of the Government may be recruited, *"when needed,"* and not for any purpose, while such, of defense of the Nation.

Army Regulations expressly provide (Army Regulations 140, Sec. I, Par. 4, January 16, 1928) as follows:

"4. Purpose and composition.—The Officers' Reserve Corps is organized for the purpose of providing a reserve of officers available for *military service when needed.* * * * [Italics ours.]

These Reserve branches have steadily grown in numbers, and the obligation to transport members of such organizations, at greatly reduced rates, for purposes of mere instruction and training, would put an ever increasing burden upon the railroads—a burden not contemplated by them or by Congress at the time of the passage of the railroad land-grant Acts. According to the Annual Report of the Secretary of War for the fiscal year ended June 30, 1923, there were on June 30, 1922, 67,390 members of

the *Army Officers' Reserve Corps,* alone, and on June 30, 1923, 76,923. The Annual Report for June 30, 1930, p. 6, shows that on that date the number had jumped to 113,523, and this at a time when no cloud of war was anywhere to be seen in the country.

1 (g). The decision of the Honorable Court of Claims in respect to the status of members of the *Officers' Reserve Corps* also is in conflict with the decision of this Honorable [fol. 7] Court in The Louisville and Nashville Railroad Co. case, 258 U. S. 374, reversing the Court of Claims, 55 C. Cls. 45, and holding that members of the *U. S. Coast Guard,* in time of peace, are not "troops of the United States", within the meaning of the railroad land-grant Acts, notwithstanding the *U. S. Coast Guard* is made "a part of the military forces of the United States" by the Act creating it.

So also, as regards the ruling of the Court of Claims with respect to the status of the other classes of persons to which your petitioner excepts.

2. The *Navy Nurse Corps* (female) is *not* a military organization and its members are *not either commissioned or enlisted* in the military service of the United States. The Act of May 13, 1908, ch. 166, 35 Stat. 146, establishing the Navy Nurse Corps, merely provides for the *appointment* of the personnel of such Corps. Navy Nurses, in time of peace, are no more "troops of the United States," in any sense, than are civilian clerks in the Navy Department who travel for the purposes of said Department at Government expense.

With regard to Navy Nurses, Special Findings of Fact, Section VIII, states as to part of them:

"Those covered by transportation requests Nos. * * * were reporting for service under initial orders, the land-grant deductions as to which were $23.33, there being no percentage deductions."

It is seen from this that certain of these persons really were *not even Navy Nurses,* at the time they were transported, but would become Navy Nurses *at some later time after arrival at their destinations.* This deduction was made, therefore, in the face of the principle laid down by this Honorable Court in the Union Pacific Case, 249 U. S.

354, 359, that "applicants for enlistment," even though accepted provisionally, do not become "troops of the United States" until they are actually mustered into service, and [fol. 8] that "it is the actual enlistment, the oath of allegiance, that changes the status from civilian to soldier."

3. As to *Prisoners and Guards:* The railroads have consistently maintained that the term "troops of the United States," as used in the transportation provisions of the railroad land-grant Acts, does not include the transportation *of* an *individual soldier unless for a strictly military purpose.* Hence, the railroads have maintained that said term does not include a *Prisoner and his guard* en route to a place designated for his imprisonment, and certainly not where the cost of such transportation is charged to the prisoner; as by such process the Government *commercializes the land-grant Acts by paying to the railroads only the reduced land-grant rates and charging to the prisoners the full tariff (Commercial) rates;* thereby directly benefiting *in money* in the difference. Thus, the Special Findings of Fact herein, Section VI, states:

"The *commercial* fares for the transportation of these soldiers and their guards [422 persons] were actually charged by the Government against said soldiers."

Besides, as said by this Honorable Court in the *Union* Pacific case, 249 U. S. 354, at p. 360, with regard to *furloughed soldiers,* there was no actual expense to the Government because "the Government merely *advances* to him [the furloughed soldier] the cost of the transportation."

4. In holding that members of the *Officers' Reserve Corps of the Army, Navy Nurses* (female), and *Military Prisoners and Guards,* are to be regarded as "troops of the United States," within the meaning of the railroad land-grant Acts, [fol. 9] the Court of Claims followed its decisions in Illinois Central Railroad Co., 62 C. Cls. 61, and Louisville and Nashville Railroad Co., id. 154, observing that an application for a writ of certiorari was denied by this Honorable Court in the Illinois Central case, 273 U. S. 710. The carriers have not acquiesced in the last mentioned decisions of the Court of Claims, and they believe that said decisions are grievously in conflict with the principles of construction plainly

announced by this Honorable Court, and by the Honorable Court of Claims itself, in other cases above referred to.

Nor is the denial of the petition for a writ of certiorari in the Illinois Central Case any reason for denial of the present petition, as it is well understood that all such petitions must stand on their own peculiar merits.

5. The Honorable Court of Claims was in error in holding that an *officer of the Engineer Corps* of the War Department, when traveling *in time of peace* for such purposes as supervising river and harbor improvement work, or attending meetings of the California Debris Commission, *duties merely civil in their nature,* were "troops of the United States," within the meaning of the land-grant Acts. Such [fol. 10] duties are expressly recognized in the Army Appropriation Acts, and in all official Army reports, as "*Non-Military* Activities of the War Department," as distinct from Military Activities (Army Appropriation Act for 1931; Annual Report of Secretary of War, 1930, p. 9.) The conclusion appears inescapable in view of the principles laid down by this Honorable Court in the Union Pacific case (*supra*), which is hereinafter more particularly alluded to.

6. The decision of the Court of Claims, in respect of *all classes of persons* in this case, as to whom exceptions are taken herein, is in conflict with the *principles* of the decision of this Court, and, in effect, with the *decision* itself, in the case of the Union Pacific Railroad Co., 249 U. S. 354, which held that *applicants for enlistment in the Army,* both accepted and rejected, as also other specified classes of persons, were *not* "troops of the United States", within the meaning of the railroad land-grant Acts. Also said decision of the Court of Claims is in conflict with the principles established by other decisions of this Honorable Court hereinafter mentioned, as well also with the case of The Oregon-Washington Railroad & Navigation Co. vs. United States, 255 U. S. 339, which held that Army officer's *personal effects,* transported at Government expense on change of station, were not "*property* of the United States", within the meaning of said Acts, even though such property was necessarily in use by the officers while in the performance of their official duties.

7. At the time of the passage of the railroad land-grant Acts, it could not have been considered by any party to the

Corrected par. 8, page 9, of **Petition** and **Record**, in Supreme Court U. S., *re S. P. Co. v. U. S.*, No. 339, Oct. Term, 1931. (Corrections consist of additions shown in **bold type.**):

8. The construction placed by the decision of the Court of Claims would *not only render the provisions for reduced rate transportation,* in the land-grant Acts, for "troops of the United States," a *"breach of faith on the part of the United States but an invasion of the constitutional rights" of the Company,* as was said in the case of *United States v. Central Pacific Railroad Company,* 118 U. S. 235, 240, with regard to the provisions of the *Act of May 7, 1878,* ch. 96, 20 Stat. 56, (Thurman Act), this Honorable Court holding in that case that the term *"whole amount of compensation"* for transportation **for the United States** on the bond-aided Central Pacific Railroad, thereby required to be withheld to apply against the indebtedness of that Company, *could not be interpreted to change the provisions* of the prior Act of *July 1, 1862,* ch. 120, 12 Stat. 489, *and as amended by the Act of July 2, 1864,* ch. 216, 13 Stat. 356, *which required that only one-half of* [fol. 12] such compensation should be withheld account of the indebtedness of the Company, **so as to withhold any of the earnings of those roads owned or operated by the bond-aided company but which were not themselves aided by Government bonds.**

contract, created by such Acts with respect to the transportation of "troops of the United States", that said term might be enlarged by Congress, or by any other branch of the Government, to include, *in time of peace,* any other per-
[fol. 11] sons than those enlisted in the *regular military forces* of the United States, such as the *Regular Army,* the *Navy,* or the *Marine Corps,* for *actual* military service.

So, in the Union Pacific case, 249 U. S. 354, this Court said:

"In 1850 the word 'troops' had (and it has ever since had) an established meaning: Namely, 'soldiers collectively—a body of soldiers.'"

These words very aptly apply to the present case. And here we again refer to the primary and historical meaning of the term "troops," as used in the land-grant railroad Acts, and also in the bond-aided railroad Acts, as meaning *soldiers* who would be necessary to the protection of our frontier country, and of those persons employed in the construction of the railroads, particularly against hostile Indians (Paragraph 4, supra).

8. The construction placed by the decision of the Court of Claims would *not only render the provisions for reduced-rate transportation,* in the land-grant Acts, for "troops of the United States," a *"breach of faith on the part of the United States but an invasion of the constitutional rights" of the Company,* as was said in the case of United States v. Central Pacific Railroad Company, 118 U. S. 235, 240, with regard to the provisions of the Act of May 7, 1878, ch. 96, 20 Stat. 56, (Thurman Act), this Honorable Court holding in that case that the term *"whole amount of compensation"* for transportation on the bond-aided Central Pacific Railroad, thereby required to be withheld to apply against the indebtedness of that Company, *could not be interpreted to change the provisions* of the prior Act of July 1, 1862, ch. 120, 12 Stat. 489, *and as amended by the Act of July 2, 1864,* ch. 216, 13 Stat. 356, *which required that only one-half of* [fol. 12] such compensation should be withheld account of the indebtedness of the Company.

9. The principles of construction involved in the decision of the Court of Claims, in the respects excepted to by petitioner, are of great importance both to the railroads and to

the Government, and *should be finally determined* by *this* Honorable Court. Not only are the land-grant railroads injuriously affected by the broad and unncessary construction which the Court of Claims has given in this case to the term "troops of the United States", as used in the railroad land-grant Acts, but practically all the other railroads of the country, and, through the railroads, thousands of persons, who are dependent on revenues thereof, and who least can afford the losses, are affected since all the railroads are parties to the agreements with the Government by which they *equalize* their charges for Government transportation on the basis of what such charges would be over usually traveled routes producing the greatest amount of *lawful* land-grant deductions.

10. The decision of the Court of Claims is far reaching not only in the classes of transportation affected, but *would make the burden of its holding a continuing one for all time. A privilege in respect of transportation charges, such as given by the land-grant Acts, is not like a grant of property, and should not be extended by doubtful construction.*

[fol. 13] 11. The Honorable Court of Claims failed utterly to analyse and consider the underlying principles of the land-grant Acts, or to give effect to this Honorable Court's interpretation thereof, and to the clear definition of the term "troops of the United States," in the Union Pacific Case, 249 U. S. 354, before alluded to, and which is a classic on the subject of Government transportation over land-grant railroads, and we particularly quote therefrom, as showing error of the Honorable Court of Claims, the following (pp. 356, 357):

"In defining the transportation rights secured to the United States, these land-grant acts draw a broad distinction between freight and passengers. All 'property' of the Government, whatever its character and intended use, is to be carried 'free of toll or other charge;' but of the many persons in its service, only 'troops.' The history of the legislation shows that both the broad term, 'any property,' and the narrower one, 'troops,' was adopted deliberately. The earliest land-grant act in which the provision appears is that of September 20, 1850, c. 61, § 4, 9 Stat. 466, 467, under which the Illinois Central was constructed. The bill as introduced provided for the free transportation

of 'troops and munitions of war.' It was amended so as to read 'any property or troops.' There had been an earlier act granting land to the State of Illinois for the construction of a canal (Act of March 30, 1822, c. 14, 3 Stat. 659) which was amended (Act of March 2, 1833, c. 87, 4 Stat. 662) so as to permit, on the same terms, the use and disposition of the land for railroads. That act provided for the free transportation of 'any property of the United States, or persons in their service.'"

The present decision of the Court of Claims, in effect, sets at naught all its earlier well considered cases, and places once more in chaos principles heretofore firmly established by it and by this Honorable Court.

[fol. 14] In certain instances the Honorable Court of Claims gave judgment to your petitioner to recover deductions aggregating $493.71. It is understood that this allowance was account of deductions made either because the persons transported were believed to have been "furloughed soldiers" under decision in the Union Pacific Case, 249 U. S. 354, or civilian persons, or "stragglers." As to the transportation charges included in this judgment amount, your petitioner, of course, does not take exception.

Wherefore your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Claims, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. D-550, Southern Pacific Company, Plaintiff, vs. The United States, Defendant, and that the said judgment of the Court of Claims may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

Southern Pacific Company by Charles H. Bates,
Charles H. Bates, Counsel for Petitioner.

August 31, 1931.

[fol. 1] IN COURT OF CLAIMS OF THE UNITED STATES

No. D-550

SOUTHERN PACIFIC COMPANY, Plaintiff,

vs.

THE UNITED STATES

(Land-Grant Roads—Term "Troops of the United States"—Military Prisoners and Guards, Reserve Officers, Navy Nurses, War Department Engine-rs on non-military duty, Deceased Soldiers, Sailors, Marines, and Escorts, Enlisted Men—Cost charged to Soldiers, Officers and Enlisted Men Proceeding Home on Retirement, and Stranded Enlisted Men)

I. HISTORY OF PROCEEDINGS—Original Petition filed August 4, 1924; First amended petition filed August 6, 1924

II. SECOND AMENDED PETITION—Filed November 7, 1924

To the Honorable Court of Claims:

The Southern Pacific Company, plaintiff, respectfully represents:

I

Plaintiff is a corporation of the State of Kentucky, and now is, and was during the times hereinafter referred to, [fol. 2] engaged as a common carrier for hire of persons and property by railroad in and through various States of the United States, and, either by its own operated lines of railroad or in participation with other carriers, between the points hereinafter referred to.

II

Under the Acts of Congress granting lands in aid of railroads and Acts of Congress regulating the expenditures of appropriations by the United States for Army transportation over such land-grant railroads, land-grant railroads

were required to transport "troops of the United States" at certain reduced fares, being less than those charged private parties for similar transportation; but in none of said Acts were said land-grant railroads required, nor have they ever agreed, to transport as "troops of the United States," at such less rates, the certain persons more particularly referred to in Paragraph IV hereof.

III

Some years ago, and prior to the times when the services hereinafter mentioned were performed, railroad companies of the United States, generally, including plaintiff, severally agreed with the Quartermaster General of the United States Army (subject to certain exceptions not necessary here to be stated) to accept, "for transportation of persons for whom the United States Government is lawfully entitled to reduced fares over land-grant roads," the "lowest net fare and lowest net excess baggage rate lawfully available, as derived, through deductions account land-grant distance via a usually traveled route for military traffic, [fol. 3] from a lawful fare filed with the Interstate Commerce Commission as applying from point of origin to destination via such route at time of movement," when such movements were made under United States requests for such transportation of this issue of the War Department, Navy Department, or Marine Corps. These agreements, commonly known as "Land-Grant Equalization Agreements," were in force at the times of the transactions hereinafter referred to. Said agreements and a list of carriers participating are set forth in Appendix No. 9 to Manual for the U. S. Quartermaster Corps, 1916, Vol. II, pp. 223, 229-230, which was superseded by Quartermaster General Circular No. 15, May 18, 1922.

IV

First Claim

During the years 1920, 1921, 1922 and 1923, plaintiff, upon transportation requests issued by the War Department, Navy Department and Marine Corps, rendered certain services for the United States in the transportation of persons belonging to the following classes, none of whom

were "troops of the United States" within the meaning of the aforesaid railroad Land-Grant Acts and Land-Grant Equalization Agreements, to wit:

1. Military Prisoners of the United States and their Guards, which persons were not, at the time, being transported as part of any military movement, and/or the cost of whose transportation was charged by the United States to said prisoners.

2. Members of the Officers' Reserve Corps, organized under the Act of June 3, 1916, chap. 134, sec. 37 (39 Stat. [fol. 4] 189), as amended by the Act of June 4, 1920, chap. 227, sec. 32 (41 Stat. 775), which persons, at the time of their transportation as aforesaid, were not in the active military service of the United States nor subject to the laws and regulations for the government of the Army, as provided by Sec. 38 of said Act of June 3, 1916 (39 Stat. 190-191), in the case of members of the Officers' Reserve Corps ordered into active service by the Secretary of War.

3. Persons in the Nurse Corps (Female) of the Navy, organized under authority of the Act of Congress of May 13, 1908, chap. 166 (35 Stat. 146).

4. Engineers of the War Department of the United States traveling on non-military duty.

5. Remains of deceased enlisted men of the Army, Navy and Marine Corps, and their escorts.

6. Enlisted men of the Army, Navy and Marine Corps not being transported as part of any military movement and/or the cost of whose transportation was charged to them by the United States.

7. Officers and enlisted men of the United States Army, Navy and Marine Corps proceeding to their homes on retirement.

8. Stranded enlisted men whose transportation was not part of any military movement.

(a) For a large amount of said transportation (as more particularly set forth in the statement, marked "Exhibit A to Petition," filed with the original petition herein, covering "Military Prisoners and their Guards," and by the further statement, marked "Exhibit B to Petition," filed here-

with, covering the other classes of persons above mentioned), plaintiff rendered its bills to defendant at full tariff fares, and the same were paid by disbursing officers of the United States as rendered, but thereafter, following a decision rendered by the Comptroller General of the [fol. 5] United States, October 22, 1921 (1 Comp. Gen. Dec., 233), the accounting or disbursing officers of the Government deducted, from subsequent bills of plaintiff for other Government transportation, amounts claimed by defendant to be due the United States as land-grant deductions for the transportation of the aforesaid classes of persons, against plaintiff's protest and objection.

(b) In certain other instances (as more particularly set forth in said Exhibits A and B) plaintiff rendered its bills for such transportation at net military fares (i. e., with land-grant deductions shown on the face of said bills), because of the insistence of the accounting and disbursing officers of the Government upon such deductions being made, but with protest in writing on the face of said bills against the requirement of said land-grant deductions and the statement therein that payment at said reduced fares was accepted under protest and as part payment only.

(c) In certain other instances (as more particularly set forth in the aforesaid "Exhibit A" and "Exhibit B"), plaintiff billed the defendant for such transportation at full tariff charges, but said bills were required by the disbursing officers of the Government to whom presented to be restated at net land-grant fares, which plaintiff did, but under protest shown on the face of its bills as so restated.

(d) In certain other instances (as more particularly set forth on sheet 17 of said "Exhibit A"), plaintiff billed for said transportation at full tariff charges but the same were reduced to net land-grant fares by defendant's disbursing officers, and paid accordingly, plaintiff accepting payment in such reduced amounts under protest, expressed or implied, as part payment only.

(e) In certain other instances (as more particularly set [fol. 6] set forth in said "Exhibit B," filed herewith), plaintiff rendered its bills for such transportation at full tariff charges but the same were reduced to net land-grant fares by the General Accounting Office, plaintiff accepting payment in such reduced amounts under protest.

(f) In certain other instances (as shown in detail with respect to "Military Prisoners and their Guards" in said "Exhibit A" to the original petition herein, and with respect to the other classes of persons above mentioned in said "Exhibit B," filed herewith), plaintiff was required, by the disbursing or accounting officers of the defendant to refund the amounts claimed by the Government as land-grant deductions on account of transportation of the character aforesaid, for which plaintiff had been paid at full tariff fares, which said refunds were made by plaintiff under protest, express or implied.

The amounts deducted by the disbursing and accounting officers of the Government on account land-grant, as aforesaid, and the amounts required by said officials to be deducted by plaintiff on said account, as aforesaid, as well as the amounts required to be refunded by plaintiff, as aforesaid, aggregate $18,187.69.

V

Second Claim

Plaintiff also sues the defendant for certain amounts aggregating $312.13, also deducted or required to be deducted by the disbursing and accounting officers of the Government in paying or settling the aforesaid bills of plaintiff for the transportation of the several classes of persons referred to in paragraph IV hereof, such deductions being [fol. 7] made under the alleged authority of the Joint Military Arrangements between certain railroads (including plaintiff) and the United States, then in force, providing for a deduction of, at first, 5 per cent, and later, 3 per cent (in addition to land-grant) for the transportation of officers and enlisted men of the United States Army, Navy and Marine Corps, and other persons connected therewith, where the entire transportation cost was paid by the United States. (Joint Military Arrangement, dated December 28, 1916, effective January 1, 1917, Secs. III and IV, which provided for a 5 per cent deduction, and Joint Military Arrangement No. 1, dated December 28, 1920, effective January 1, 1921, Secs. 3 and 4, which provided for a 3 per cent deduction.)

The particulars of these 5 per cent and 3 per cent deductions are also set forth in the aforesaid "Exhibit A," filed with the original petition, herein, and "Exhibit B," filed herewith.

Against these percentage deductions plaintiff also protested.

The percentage deductions here sought to be recovered were not authorized by the terms of either of said Joint Military Arrangements either because the persons transported were not included among those enumerated in said Joint Military Arrangements, or because the entire cost of their transportation was not paid by the United States, as required in said Joint Military Arrangements.

[fol. 8]

VI

The following is a summary of the aforesaid "First Claim" and "Second Claim," as shown in detail by said "Exhibit A," filed with the original petition herein, and said "Exhibit B," filed herewith:

Military Prisoners and Guards

("Exhibit A")

	Land-grant deduction	5% or 3% deduction
Sheets 1 to 8—Items originally billed at tariff charges, paid by Disbursing Officer as billed, and subsequently reduced by General Accounting Officer by deduction from other bills. Latter settlements protested by carrier except those shown on sheet 8 as to which protest is not shown.....	$7,101.14	$54.82
Sheets 9 to 13—Items originally billed at net military fares with protest shown on face of bill....	7,446.45	164.83
Sheets 14 to 15—Items originally billed at tariff charges, returned by Disbursing Officer and restated at net fares with protest shown on face of bill.....	409.31	22.07
Sheet 16—Items originally billed at tariff charges, and reduced to net fares by Disbursing Officer....	47.57	7.79
Sheet 17—Items originally billed at tariff charges refund voucher issued covering alleged overpayment	364.21	.....
Total	$15,368.68	$249.51

[fol. 9]

Reserve Officers

("Exhibit B"—Pages 1-7)

	Land-grant deduction	5% or 3% deduction
Sheet 1—Items originally billed at tariff charges, paid by Disbursing Officer and subsequently reduced by General Accounting Office by deduction from other bills. Latter settlements protested by carrier	$106.73	$7.49
Sheet 2—Items originally billed at tariff charges, paid by Disbursing Officer as billed and subsequently reduced by Disbursing Officer by deduction from other bills	17.64	.....
Sheets 3 & 4—Items originally billed at tariff charges and reduced to net fares by General Accounting Office. Settlement protested by carrier	229.77 51.06	5.72 .78
Sheet 5—Items originally billed at gross fares, returned by Disbursing Officer, restated at net military fares with protest shown on face of bill	259.83	9.53
Sheet 6—Items originally billed at tariff charges, refund voucher issued covering alleged overpayment	680.56	2.59
Total	$1,845.59	$26.11

Navy Nurses

("Exhibit B"—Pages 8-13)

	Land-grant deduction	5% or 3% deduction
Sheet 1—Items originally billed at tariff charges, paid by Disbursing Officer as billed and subsequently reduced by Disbursing Officer by deduction from other bills	$21.68	$2.00
Sheets 2 and 3—Items originally billed at net military fares with protest shown on face of bill	329.75 84.81	.62
Sheet 4—Items originally billed at tariff charges, paid by Disbursing Officer and subsequently reduced by General Accounting Office by deduction from other bills. Settlement protested by carrier	27.42	2.23
Sheet 5—Items originally billed at tariff charges returned by Disbursing Officer and restated at net fares with protest shown on face of bill	87.66	1.59
Total	$550.77	$6.44

[fol. 10] War Department Engineers on Non-military Duty

("Exhibit B"—Pages 14-17)

	Land-grant deduction	5% or 3% deduction
Sheet 1—Items originally billed at net military fares with protest shown on face of bill	$87.93	$.68
Sheet 2—Items originally billed at tariff charges returned by Disbursing Officer and restated at net fares with protest shown on face of bill	128.25	.76
Sheet 3—Items billed at net military fares. No protest shown on face of bill. Omission to note protest on these bills was a clerical error as instructions to plaintiff's Auditor required that protest should be shown	240.59	.92
Total	$456.77	$4.36

Deceased Soldiers, Sailors, Marines and Escorts

("Exhibit B"—Pages 18-19)

	Land-grant deduction	5% or 3% deduction
Sheet 1—Items originally billed at tariff charges paid by Disbursing Officer and subsequently reduced by General Accounting Office by deduction from other bills. Settlement protested by carrier	$145.53	$10.57
Sheet 2—Items originally billed at net military fares with protest shown on face of bill	37.02	5.00
Total	$182.55	$15.57

Cost Charged to Soldiers

("Exhibit B"—Page 20)

	Land-grant deduction	5% or 3% deduction
Items originally billed at tariff charges, paid by Disbursing Officer and subsequently reduced by General Accounting Office by deduction from other bills. Settlement protested by carrier	$99.66	.....
Total	$99.66	.....

[fol. 11] Officers and Enlisted Men Proceeding Home on Retirement

("Exhibit B"—Page 21)

	Land-grant deduction	5% or 3% deduction
Items originally billed at tariff charges, paid by Disbursing Officer and subsequently reduced by General Accounting Office by deduction from other bills. Settlement protested by carrier	$137.25	$10.14
Total	$137.25	$10.14

Stranded Enlisted Men

("Exhibit B"—Page 22)

	Land-grant deduction	5% or 3% deduction
Items originally billed at tariff charges, and reduced to net fares by Disbursing Officer.....	$46.42	.....
Total	$46.42	.....
Grand totals.....	$18,187.69	$312.13

VII

Wherefore, plaintiff says there is now justly due and owing it by the United States the sum of $18,499.82, exclusive of all just credits and off-sets, for which amount it prays judgment, no assignment or transfer of the aforesaid claims or any interest therein having been made.

Plaintiff has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against that Government, and believes the facts stated in this petition to be true.

Southern Pacific Company, Plaintiff, by Charles H. Bates, Its Attorney-in-Fact. Harr & Bates, Attorneys for Plaintiff.

[fol. 12] *Duly sworn to by Charles H. Bates. Jurat omitted in printing.*

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923, INCLUSIVE

Sheet No. 1

(Covers items originally billed at tariff charges, paid by Disbursing Officer as billed and subsequently reduced by Gen. Acctg. Officer by deduction from other bills. Settlement protested by carrier.)

Number and Date of Original Bill	Department Transportation Req. number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare at which Settlement was made: Per Capita	Net Fare at which Settlement was made: Total Amount	Deduction made from Bill: Number	Deduction made from Bill: Date	Settlement Number and Date (Settlement Protested): Number	Settlement Number and Date (Settlement Protested): Date	Published Tariff Fare: Per Capita	Published Tariff Fare: Total Amount	Balance Due: Land Grant	Balance Due: 5 or 3%
November 1920	War													
P 5674	WC 3043903 11/11	S. F.	American Lake	2	6.48	12.96	P 12266	10/21	T 71502 W	7/19/23	31.60	63.20	50.24	
5676	3031129 11/ 5	Reno	Palm City	2	24.17	48.34	16945	8/22	W 67796 W	10/21/22	28.85	57.70	9.36	
5744	2521591 11/10	S. F.	L. A.	1		12.76	13094	12/21	W 64256	3/16/22		17.06	4.30	
	2521593 11/11	L. A.	S. F.	2	12.76	25.52	"	"	"	"	17.06	34.08	8.54	
	2859901 11/ 4	Riverside	"	2	13.89	27.78	"	"	"	"	19.14	38.28	10.50	
	3043905 11/11	S. F.	Arcadia	2	13.23	26.46	"	"	"	"	17.64	35.28	8.82	
5757	3031144 11/12	Monterey	S. F.	1		3.85	11087	8/21	W 63557	1/24/22		4.44	.59	
5845	3031433 11/16	S. F.	Vancouver, Wn.	1		4.12	10472	7/21	W 63555	"		17.06	23.32	
5848	3043907 11/12	Arcadia	American Lake	4	15.62	62.48	11276	8/21	(W 64585	4/27/22	46.12	184.48	122.00	
									(W 73026	12/ 4/23				
5889	3031450 11/17	S. F.	Monterey	1		3.85	11087	"	W 63557	1/24/22		4.44	.59	
	3050377 11/16	L. A.	S. F.	1		12.76	"	"	"	"		17.06	4.30	
	3416246 "	Medford	Sacramento	1		.64	"	"	"	"		12.77	12.13	
5894	2722899 "	Arcadia	S. F.	4	13.24	52.96	11097	"	(W 63364	1/14/22	17.64	70.56	17.60	
									(W 63365					
	3031145 11/15	S. F.	Monterey	2	3.85	7.70	"	"	73026	12/ 4/23	4.44	8.88	1.18	
	3031152 11/17	Monterey	S. F.	2	3.85	7.70	"	"	"	"	4.44	8.88	1.18	
	3031153 11/18	S. F.	Monterey	1		3.85	"	"	"	"		4.44	.59	
5990	3031629 11/23	"	Camp Sherman, O.	1		65.32	"	"	"	"		87.82	22.50	
	3050386 11/17	L. A.	El Paso	1		32.40	"	"	"	"		38.22	5.82	
	3265059 11/18	San Pedro	"	1		33.21	"	"	"	"		39.00	5.79	
5992	3031160 11/23	Monterey	Steilacoom, Wn.	3	9.51	28.53	11087	"	W 63557	1/24/22	35.97	107.91	77.88	1.50
6058	3050417 11/22	L. A.	S. F.	1		12.76	"	"	"	"		17.06	4.30	
6059	3031636 11/26	Fullerton	"	2	12.98	25.96	W 6820	1/21	W 63040	12/ 9/21	17.94	35.88	9.92	
6167	2106783 11/24	Lordsburg	Baltimore	2	69.98	144.18	11276	8/21	W 64585	4/27/22	81.54	163.08	18.90	
December 1920	War													
6231	3050565 12/ 2	L. A.	Sacramento	1		11.27	6820	1/21	W 63040	12/ 9/21		16.26	4.99	
6233	2859943 12/ 5	Riverside	Calexico	2	5.00	10.00	10472	7/21	W 63555	1/24/22	8.10	16.20	4.30	
	3031819 12/ 4	S. F.	Monterey	1		3.85	"	"	"	"		4.44	.59	
	3031820 "	Monterey	S. F.	2	3.85	7.70	"	"	"	"	4.44	8.88	1.18	
	3056525 12/ 6	San Pedro	"	3	12.87	40.62	"	"	W 73026	12/ 4/23	17.82	53.46	12.84	
6318	3305450 12/ 8	S. F.	American Lake	5	6.47	32.35	11087	8/21	(W 63557	1/24/22				
									(W 73026	12/ 4/23	31.60	158.00	125.65	
6323	2783184 12/ 6	"	Des Moines, Ia.	2	50.13	100.26	11097	"	W 63364					
									W 63365	1/14/22	69.00	138.00	37.74	
6376	2210111 12/11	Monterey	S. F.	2	3.85	7.70	6820	1/21	W 63040	12/ 9/21	4.44	8.88	1.18	
	3031969 12/14	Oakland	Chico	1		3.59	"	"	"	"		5.94	2.35	
	2210112 12/12	S. F.	Monterey	1		3.85	"	"	"	"		4.44	.59	
6377	3297157 12/10	Riverside	San Jose	1		13.64	"	"	"	"		17.46	3.82	
6380	3297159 12/11	San Jose	Riverside	2	13.64	27.28	"	"	"	"	17.46	34.92	7.64	
6480	2521660 "	S. F.	San Antonio	2	52.08	104.16	11276	8/21	W 64585	4/27/22	66.60	133.20	29.04	
	2521664 12/13	"	Tacoma	19	6.35	120.65	"	"	W 73026	12/ 4/23	32.36	611.84	490.38	
	3305342 12/12	Salem	American Lake	2	2.76	5.52	"	"	"	"	6.56	13.12	7.60	
6482	3050696 12/10	L. A.	El Paso	1		32.40	11087	"	W 63557	1/24/22		38.22	5.82	
6532	3031983 12/15	S. F.	Yuma	1		18.69	"	"	"	"		20.14	2.45	
6535	2210115 12/17	Monterey	S. F.	3	3.85	11.55	11276	"	W 64585	4/27/22	4.44	13.32	2.77	
	2210116 12/18	S. F.	Monterey	1		3.85	"	"	W 73026	12/ 4/23		4.44	.59	
	3031985 12/16	Yuma	S. F.	2	18.69	37.38	"	"	"	"	28.14	56.28	18.90	
	3077199 12/21	Eugene	Portland	2	.03	.06	"	"	"	"	4.47	8.94	8.88	
	3297168 12/19	Riverside	S. F.	2	13.89	27.78	"	"	"	"	19.14	38.28	10.50	
6609	3305556 12/18	S. F.	American Lake	5	6.48	32.40	11087	"	W 63557	1/24/22	31.60	158.00	125.60	
	3423046 12/21	Nogales	Camp Funston	3	46.54	139.62	"	"	"	"	53.67	161.01	21.39	
6654	3038718 12/28	L. A.	S. F.	1		12.76	"	"	"	"		17.06	4.30	
	3038787 12/31	"	"	1		12.76	"	"	"	"		17.06	4.30	
6657	2210122 12/24	Monterey	"	2	3.85	7.70	15378	4/22	W 66286	8/14/22	4.44	8.88	1.18	
	2312734 12/17	Arcadia	"	2	13.13	26.26	"	"	"	"	17.64	35.28	9.02	
	3056452 12/22	San Pedro	Monterey	2	14.42	28.84	"	"	"	"	14.32	29.01	.30	
	3056440 12/21	"	Yuma	1		6.45	"	"	"	"		11.88	5.43	
	3056448 12/24	Yuma	San Pedro	2	6.45	12.90	"	"	"	"	11.88	23.76	10.86	
TOTAL				117		1,359.93						2251.69	1390.26	1.50

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 11, 1921, INCLUSIVE

Sheet No. 2

(Covers items originally billed at tariff charges, paid by Disbursing Officer as billed and subsequently refused by Gen. Acctg. Officer by deduction from other bills. Settlement protested by carrier.)

Number and Date of Original Bill	Department Transportation Req. number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare at which Settlement was made Per Capita	Net Fare at which Settlement was made Total Amount	Deduction made from Bill Number	Deduction made from Bill Date	Settlement Number and Date (Settlement Protested) Number	Settlement Number and Date (Settlement Protested) Date	Published Tariff Fare Per Capita	Published Tariff Fare Total Amount	Balance Due Land Grant	Balance Due 5 or 3%
December 1920	War													
P 6457	#Q 3056664 12/21	San Pedro	Calexico	1		6.73	P 15378	4/22	W 66286	8/14/22		10.74	4.01	
	3077198 12/20	Portland	Eugene	1		.02	"	"	"	"		4.47	4.45	
	2210123 12/27	S. F.	Monterey	1		3.85	"	"	"	"		4.44	.59	
	3032218 12/24	"	"	5	3.85	19.25	"	"	"	"	4.44	22.20	2.95	
	3056665 12/22	Calexico	San Pedro	2	6.73	13.46	"	"	"	"	10.74	21.48	8.02	
	3056683 12/23	San Pedro	San Bernardino	1		1.94	"	"	"	"		2.94	1.00	
6667	3032217 12/26	Monterey	S. F.	2	3.85	7.70	11097	8/21	(W 63364					
									(W 63365	1/10/22	4.44	8.88	1.18	
	3416478 12/15	Portland	"	1		3.75	"	"	"	"		26.96	23.21	
	3056654 12/22	Monterey	San Pedro	1		14.22	"	"	"	"		14.52	.30	
6767	2611170 12/25	Nogales	Ft. Leavenworth, Kan.	3	51.64	154.92	12266	10/21	T 71502 W	7/19/23	58.56	175.68	20.76	
	3032311 12/29	S. F.	Dallas	1		52.25	"	"	"	"		66.60	14.35	
6768	2788987 12/22	Glendale, Ore.	Ft. Stevens, Ore.	4	3.27	13.08	10472	7/21	W 63555	1/24/22	13.43	53.72	40.64	
	2944736 12/31	Sacramento	American Lake	3	3.39	10.17	"	"	"	"	29.26	87.78	77.61	
	3032251 12/28	S. F.	Camp Lewis	4	6.48	25.92	"	"	"	"	31.60	126.40	100.48	
	3045603 12/29	Eugene	Vancouver	2	.40	.80	"	"	"	"	4.95	9.90	9.10	
	3056648 12/20	San Pedro	El Paso	1		33.18	"	"	"	"		39.00	5.82	
	3262218 12/30	"	Douglas	4	25.11	100.44	"	"	"	"	30.84	123.36	22.92	
	3291803 12/27	L. A.	Ft. Huachuca, Ariz.	3	22.35	67.05	"	"	"	"	28.08	84.24	17.19	
	3032228 12/24	S. F.	El Paso	2	38.78	77.56	"	"	"	"	55.26	110.52	32.96	
January 1921	War													
6823	2210140 1/ 3	Monterey	S. F.	2	3.85	7.70	11097	8/21	(W 63364					
									(W 63365	1/10/22	4.44	8.88	1.18	
	2210142 1/ 5	"	"	2	3.85	7.70	"	"	W 73026	12/ 4/23	4.44	8.88	1.18	
	2210143 1/ 6	S. F.	Monterey	1		3.85	"	"	"	"		4.44	.59	
	3032516 "	"	Salinas	1		3.55	"	"	"	"		4.14	.59	
	3056817 1/ 5	San Pedro	Santa Paula	1		2.64	"	"	"	"		3.24	.60	
	3056818 1/ 6	Santa Paula	San Pedro	3	2.64	7.92	"	"	"	"	3.24	9.72	1.80	
	3056819 1/ 5	San Pedro	S. F.	3	13.54	40.62	"	"	"	"	17.82	53.46	12.84	
	3077242 1/ 4	S. F.	Portland	2	3.75	7.50	"	"	"	"	26.96	53.92	46.42	
6904	3032467 1/ 7	"	Camp Lewis	1		6.48	10499	7/21	W 63338	1/ 9/22		31.60	25.12	
	3038829 1/ 4	L. A.	El Paso	1		28.82	"	"	"	"		38.22	8.51	.89
	3038831 "	"	Seattle	1		16.36	"	"	"	"		47.54	31.18	
	3074620 1/ 5	San Pedro	El Paso	2	29.58	59.16	"	"	"	"	39.00	78.00	17.02	1.82
6918	3052662 1/ 1	S. F.	Spokane	1		12.05	16818	8/22	W 67770	10/28/22		40.44	28.39	
	3052665 "	"	"	1		12.05	"	"	W 73026	12/ 4/23		40.44	28.39	
6919	2506694 1/ 7	Yuma	San Diego	7	10.74	75.18	(11992	10/21	W 64152	1/ 8/22)				
							(11272	8/21	W 73026	12/ 4/23)	16.25	113.75	38.57	
	2521725 1/ 4	S. F.	Tacoma	11	6.35	69.85	"	"	"	"	32.16	353.76	283.91	
	3052694 1/ 2	"	Spokane	2	12.05	24.10	"	"	"	"	40.44	80.88	56.78	
6964	3032577 1/14	"	Bakersfield	1		10.01	"	"	"	"		11.34	1.33	
	3056893 1/10	San Pedro	S. F.	2	13.54	27.08	"	"	"	"	17.82	35.64	8.56	
	3056897 "	"	"	2	13.54	27.08	"	"	"	"	17.82	35.64	8.56	
	3056901 "	"	"	2	13.54	27.08	"	"	"	"	17.82	35.64	8.56	
	3056905 "	"	Monterey	2	14.22	28.44	"	"	"	"	14.52	29.04	.60	
	3270737 1/ 8	S. F.	Yuma	2	18.69	37.38	"	"	"	"	28.14	56.28	18.90	
	3270739 1/10	Yuma	S. F.	3	18.69	56.07	"	"	"	"	28.14	84.42	28.35	
	3077375 1/ 5	Portland	"	3	3.75	11.25	"	"	"	"	26.96	80.88	69.63	
	3423083 1/11	Nogales	Monterey	3	33.44	203.38	"	"	"	"	40.66	122.58	19.20	
7040	3032581 1/14	S. F.	Del Rio, Tex.	1		52.15	10472	7/21	W 63555	1/24/22		67.77	15.62	
	3074667 1/ 5	"	El Paso	2	38.78	77.56	"	"	"	"	55.26	110.52	32.96	
7047	2506176 1/ 9	Red Bluff	San Diego	2	17.44	34.92	11087	8/21	W 63557)					
									W 73026)	12/ 4/23	25.97	51.94	17.02	
TOTAL				109		1484.22						2686.33	1199.90	2.71

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1921, INCLUSIVE

Sheet No. 3

(Covers items originally billed at tariff charges, paid by Disbursing Officer as billed and subsequently reduced by Gen. Mastg. Officer by deduction from other bills. Settlement protested by carrier.)

Number and Date of Original Bill	Department Transportation Req. number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare at which Settlement was made Per Capita	Net Fare at which Settlement was made Total Amount	Deduction made from Bill Number	Deduction made from Bill Date	Settlement Number and Date (Settlements Protested) Number	Settlement Number and Date (Settlements Protested) Date	Published Tariff Fare Per Capita	Published Tariff Fare Total Amount	Balance Due Land Grant	Balance Due %
January 1921	War													
P 7093	WD 3032578 1/14	Bakersfield	S. F.	2	10.01	20.02	P 11097	8/21	W 63364)					
									63365)	1/10/22	11.34	22.68	2.66	
	3038991 1/18	L. A.	"	1		12.76	"	"	"	"		17.04	4.28	
	3056907 1/11	Monterey	San Pedro	1		14.22	"	"	"	"		14.52	.30	
	3056962 1/ 7	San Pedro	S. F.	2	13.54	27.08	"	"	"	"	17.82	35.64	8.56	
	3056963 "	S. F.	San Pedro	1		13.54	"	"	"	"		17.82	4.28	
	3057003 1/ 2	"	"	2	13.54	27.08	"	"	"	"	17.82	35.64	8.56	
	3085124 1/ 7	Medford	Sacramento	1		.64	"	"	"	"		12.77	12.13	
7098	2505077 1/11	Calexico	S. F.	2	18.84	37.68	(11992	10/21	W 64152	1/ 8/22)				
							(11272	8/21	W 73026	12/ 4/23)	27.00	54.00	16.32	
	3056684 12/24/20	San Bernardino	San Pedro	2	1.91	3.82	"	"	"	"	2.94	5.88	2.06	
	3056965 1/17	San Pedro	S. F.	2	13.54	27.08	"	"	"	"	17.82	35.64	8.56	
	3056991 1/18	"	Corvallis	2	13.34	26.68	"	"	"	"	39.17	78.34	51.66	
	3057001 1/19	"	S. F.	4	13.54	54.16	"	"	"	"	17.82	71.28	17.12	
	3057011 1/21	"	"	2	13.54	27.08	"	"	"	"	17.82	35.64	8.56	
	3057015 1/20	"	"	2	13.54	27.08	"	"	"	"	17.82	35.64	8.56	
	3423085 1/13	Monterey	Nogales	2	34.46	68.92	"	"	"	"	40.86	81.72	12.80	
7162	3038973 1/18	L. A.	Laredo, Tex.	1		54.05	11097	"	W 63364)					
									W 63365)	1/24/22		66.69	12.64	
	3039019 1/21	"	Spofford, Tex.	1		43.16	"	"	"	"		55.80	12.64	
7171	2521753 "	S. F.	Tascha	6	6.35	38.10	(11992	10/21	W 64152	1/ 8/22)				
							(11272	8/21	W 73026	12/ 4/23)	32.16	192.96	154.86	
	3032614 1/17	"	Ft. Stevens, Ore.	5	6.99	34.95	"	"	"	"	30.90	154.50	119.55	
	3052795 1/21	"	Spokane	2	12.05	24.10	"	"	"	"	40.44	80.88	56.78	
	3062444 1/ 7	San Pedro	San Antonio	3	55.53	166.59	"	"	"	"	61.35	184.05	17.46	
7224	2210183 1/30	Monterey	S. F.	5	3.85	19.25	15378	4/22	W 66286	8/14/22	4.44	22.20	2.95	
	2312729 1/18	Arcadia	"	2	12.83	25.66	"	"	"	"	17.64	35.28	8.82	.00
	2312758 1/22	S. F.	Arcadia	1		12.83	"	"	"	"		17.64	4.41	.40
	2312765 "	Arcadia	S. F.	4	12.83	51.32	"	"	"	"		70.56	17.64	1.00
	2312771 1/24	"	"	2	12.83	25.66	"	"	"	"	17.64	35.28	8.82	.80
	3032620 1/18	S. F.	Monterey	2	3.85	7.70	"	"	"	"	4.44	8.88	1.18	
	3032638 1/20	"	"	4	3.85	15.40	"	"	"	"	4.44	17.76	2.36	
	3057024 1/22	San Pedro	S. F.	2	13.54	27.08	"	"	"	"	17.82	35.64	8.56	
	3057028 "	"	"	2	13.13	26.26	"	"	"	"	17.82	35.64	8.56	.82
	3057078 1/27	"	Monterey	2	14.42	28.84	"	"	"	"	16.58	29.16	.32	
	3057080 "	"	S. F.	2	13.13	26.26	"	"	"	"	17.82	35.64	8.56	.82
	3057086 "	"	"	2	13.54	27.08	"	"	"	"	17.82	35.64	8.56	
7225	3057090 "	"	Monterey	2	14.42	28.84	11276	8/21	W 64585	4/21/22	14.58	29.16	.32	
	3057094 "	"	S. F.	2	13.54	27.08	"	"	"	"	17.82	35.64	8.56	
	3277833 1/28	Riverside	"	2	13.47	26.94	"	"	"	"	19.14	38.28	10.50	.84
	1317851 1/18	Portland	"	3	3.75	11.25	"	"	"	"	26.96	80.88	69.63	
	2965981 1/30	Calexico	"	3	18.27	54.81	"	"	"	"	27.00	81.00	26.19	1.73
7319	3038696 1/25	S. F.	Camp Lewis	1		6.48	10472	7/21	W 63555	1/24/22		31.60	25.12	
	3032696 "	"	"	2	6.48	12.96	"	"	"	"	31.60	63.20	50.24	
7326	2979810 1/30	"	Seattle	1		7.63	11276	8/21	W 64585	4/21/22		33.42	25.79	
	3052829 1/27	"	Spokane	1		12.04	"	"	"	"		40.44	28.40	
	3052838 1/31	"	"	1		12.04	"	"	"	"		40.44	28.40	
February 1921	War													
7387	3038697 2/ 2	L. A.	S. F.	1		12.76	11097	8/21	W 63559	1/24/22		17.04	4.28	
7391	2210183 2/ 1	S. F.	Monterey	2	3.85	7.70	11276	"	W 64585)	4/21/22	4.44	8.88	1.18	
	2312778 2/ 5	"	Santa Barbara	1		12.67	"	"	W 73026	12/ 4/23		13.26	.59	
	2312788 2/ 6	Santa Barbara	S. F.	2	12.67	25.34	"	"	"	"	13.26	26.52	1.18	
	3038691 2/ 8	S. F.	Watsonville	2	3.00	6.00	"	"	"	"	3.96	7.92	1.92	
	3038693 "	"	Monterey	4	3.85	15.40	"	"	"	"	4.44	17.76	2.36	
	2312818 2/ 3	"	Santa Barbara	2	12.67	25.34	"	"	"	"	13.26	26.52	1.18	
	2312822 2/ 4	Santa Barbara	S. F.	3	12.67	38.01	"	"	"	"	13.26	39.78	1.77	
	2312827 "	S. F.	San Luis Obispo	2	8.41	16.82	"	"	"	"	9.00	18.00	1.18	
	2312830 2/ 5	San L. Obispo	S. F.	3	8.41	25.23	"	"	"	"	9.00	27.00	1.77	
	2312849 2/ 6	Riverside	"	2	13.89	27.78	"	"	"	"	19.14	38.28	10.50	
TOTAL				118		1455.25						2383.49	980.63	1.79

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1921, INCLUSIVE

Sheet No. 4

(Covers items originally billed at tariff charges, paid by Disbursing Officer as billed and subsequently reduced by Gen. Asstg. Officer by deduction from other bills. Settlement protested by Carrier.)

Number and Date of Original Bill	Department Transportation Req. number and Date of Service		Journey From	Journey To	Number of Passengers	Net Fare at which Settlement was made Per Capita	Net Fare at which Settlement was made Total Amount	Deduction made from Bill Number	Deduction made from Bill Date	Settlement Number and Date (Settlement Protested) Number	Settlement Number and Date (Settlement Protested) Date	Published Tariff Fare Per Capita	Published Tariff Fare Total Amount	Balance Due Land Grant	Balance Due $
February 1921	Mar														
P 7446	WQ 2579828	2/ 5	S. F.	Seattle	1		7.63	P 11087	8/21	(W 63557	1/24/22)				
										(W 73026	12/ 4/23)		33.62	25.99	
7448	3089554	"	"	San Antonio	3	52.08	156.24	10499	7/21	W 63338	1/ 9/22	66.60	199.80	43.56	
7515	3032896	2/10	Monterey	S. F.	2	3.85	7.70	11087	8/21	W 63557	1/24/22	4.44	8.88	1.18	
	3079735	2/13	L. A.	"	2	12.76	25.52	"	"	"	"	17.04	34.08	8.56	
7522	2210193	2/ 8	Monterey	"	3	3.85	11.55	11097	"	(W 63364	1/24/22)				
										(W 63365	12/ 4/23)	4.44	13.32	1.77	
"	2210194	2/11	S. F.	Monterey	1		3.85	"	"	(W 73026			4.44	.59	
	2210220	2/10	Monterey	S. F.	3	3.85	11.55	"	"	"	"	4.44	13.32	1.77	
	2312772	2/ 2	Arcadia	"	2	13.23	26.46	"	"	"	"	17.64	35.28	8.82	
	2451102	2/12	S. F.	Monterey	1		3.85	"	"	"	"		4.44	.59	
	2451109	2/14	Monterey	S. F.	2	3.85	7.70	"	"	"	"	4.44	8.88	1.18	
	2451110	"	S. F.	Monterey	1		3.85	"	"	"	"		4.44	.59	
	2905906	2/ 4	Calexico	S. F.	2	18.84	37.68	"	"	"	"	27.00	54.00	16.32	
	2906512	2/ 8	Yuma	Riverside	2	4.74	9.48	"	"	"	"	9.24	18.48	9.00	
	3032876	2/11	S. F.	Santa Barbara	2	12.67	25.34	"	"	"	"	13.26	26.52	1.18	
	3032852	2/ 8	Watsonville	S. F.	4	3.00	12.00	"	"	"	"	3.60	14.40	2.40	
7523	3032877	2/12	Santa Barbara	"	4	12.67	50.68	10499	7/21	(W 63338	1/ 9/22)				
										(W 73026	12/ 4/23)	13.26	53.04	2.36	
	3032913	2/10	S. F.	Chico	1		3.44	"	"	"	"		6.12	2.68	
	3057197	2/12	San Pedro	S. F.	2	13.54	27.08	"	"	"	"	17.82	35.64	8.56	
7604	3032914	2/11	Chico	Camp Lewis	2	2.76	5.52	11087	8/21	W 63557	1/24/22	25.85	51.70	46.18	
	3057201	2/14	San Pedro	El Paso	1		33.18	"	"	"	"		39.00	5.82	
7605	3052884	2/11	S. F.	Spokane	1		12.04	"	"	"	"		40.44	28.40	
	3052887	"	"	"	1		12.04	"	"	W 73026	12/ 4/23		40.44	28.40	
	3057161	2/ 7	San Pedro	San Diego	4	5.75	23.00	"	"	"	"	5.93	23.72		.72
	3423130	2/ 6	Nogales	Camp Lewis	3	34.26	102.78	"	"	"	"	72.66	217.92	115.14	
7657	2451112	2/17	Monterey	S. F.	2	3.85	7.70	(11992	10/21	W 64152	3/ 8/22)				
								(11272	8/21	W 73026	12/ 4/23)	4.44	8.88	1.18	
	2451113	2/18	S. F.	Monterey	1		3.85	"	"	"	"		4.44	.59	
	2564211	2/ 9	Riverside	Yuma	1		4.74	"	"	"	"		9.24	4.50	
	3231811	2/17	S. F.	Venice	1		13.54	"	"	"	"		17.82	4.28	
	3174416	2/11	Portland	S. F.	5	3.75	18.75	"	"	"	"	26.96	134.80	116.05	
	3319434	2/15	"	Wilbur, Ore.	1		.03	"	"	"	"		6.83	6.80	
	3319440	"	"	S. F.	3	3.75	11.25	"	"	"	"	26.96	80.88	69.63	
	3327468	2/19	"	"	3	3.75	11.25	"	"	"	"	26.96	80.88	69.63	
	3159309	2/21	S. F.	Medford	2	3.44	7.20	"	"	"	"	15.11	30.22	22.94	
7658	3072737	2/14	L. A.	Nogales	1		20.56	11087	"	W 63557	1/24/22		27.12	5.92	.64
7734	3163971	2/20	S. F.	El Paso	4	38.78	155.12	10472	7/21	W 63555	"	55.26	221.04	45.92	
7740	3260187	2/19	"	American Lake	5	6.48	32.40	"	"	(W 63555	1/24/22)				
										(W 73026	12/ 4/23)	31.60	158.00	117.60	
7741	3261815	2/21	"	Tacoma	8	6.35	50.80	(11992	10/21	W 64152	3/ 8/22)				
								(11272	8/21	W 73026	12/ 4/23)	32.16	257.28	206.48	
7744	3260868	2/19	Red Bluff	Ft. Stevens, Ore.	2	3.87	6.34	"	"	"	"	23.71	47.42	40.88	
	3421119	2/24	Monterey	S. F.	2	3.85	7.70	11276	8/21	(W 64585	4/21/22)				
										(W 73026	12/ 4/23)	4.44	8.88	1.18	
	3421120	"	S. F.	Monterey	1		3.85	"	"	"	"		4.44	.59	
	3421124	2/20	Monterey	S. F.	2	3.85	7.70	"	"	"	"	4.44	8.88	1.18	
	3231813	"	Venice	"	1		13.54	"	"	"	"		17.82	4.28	
	3174417	2/21	S. F.	Portland	1		3.75	"	"	"	"		26.96	23.21	
	3319435	2/22	"	"	1		3.75	"	"	"	"		26.96	23.21	
	3319441	2/23	Portland	Medford	1		.03	"	"	"	"		11.86	11.83	
	3327469	2/23	"	S. F.	3	3.75	11.25	"	"	"	"	26.96	80.88	69.63	
	3159311	2/24	Medford	Portland	2	.03	.06	"	"	"	"	11.86	23.72	23.66	
	3421121	2/22	"	S. F.	3	3.44	10.32	"	"	"	"	15.11	45.33	34.41	
7743	3421122	2/22	S. F.	San Diego	2	17.31	34.62	11087	"	(W 63557	1/24/22)				
										(W 73026	12/ 4/23)	22.19	44.38	8.56	
[illegible]					188		1066.34						1066.88	1368.38	1.36

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923, INCLUSIVE

Sheet No. 5

(Covers items originally billed at tariff charges, paid by Disbursing Officer as billed and subsequently reduced by Gen. Acctg. Officer by deduction from other bills. Settlement protested by carrier.)

Number and Date of Original Bill	Department Transportation Req. number and Date of service	Journey From	Journey To	Number of Passengers	Net Fare at which Settlement was made Per Capita	Net Fare at which Settlement was made Total Amount	Deduction made from Bill Number	Deduction made from Bill Date	Settlement Number and Date (Settlement Protested) Number	Settlement Number and Date (Settlement Protested) Date	Published Tariff Fare Per Capita	Published Tariff Fare Total Amount	Balance Due Land Grant	Balance Due SP
March 1921	War													
P 7930	MO 2451127 3/ 2	S. F.	Monterey	1		3.85	P 11087	8/21	W 63557	1/24/22		4.44	.59	
	2451129 "	Monterey	S. F.	2	3.85	7.70	"	"	"	"	4.44	8.88	1.18	
	2451130 3/ 6	S. F.	Monterey	1		3.85	"	"	"	"		4.44	.59	
	3317436 2/15	Wilbur	Portland	1		.03	"	"	"	"		6.83	6.80	
	3317446 2/ 2	S. F.	"	2	3.75	7.50	"	"	"	"	26.96	53.92	46.42	
	3317474 3/ 5	Portland	S. F.	6	6.92	41.52	"	"	"	"	26.96	161.76	120.24	
	3339948 3/ 1	S. F.	L. A.	2	12.76	25.52	"	"	"	"	17.04	34.08	8.56	
	3339950 3/ 2	L. A.	S. F.	4	12.76	51.04	"	"	"	"	17.04	68.16	17.12	
8001	3013268 3/17	S. F.	Seattle	2	7.63	15.26	6820	1/21	W 63040	12/ 9/21	33.62	67.24	51.98	
8045	2312802 3/11	Arcadia	S. F.	4	13.23	52.92	(11992	10/21)						
							(11272	8/21)	W 64152	3/ 8/22	17.64	70.56	17.64	
	2451149 3/14	Monterey	"	4	3.85	15.40	"	"	"	"	4.44	17.76	2.36	
	3057271 3/ 2	San Pedro	Nogales	2	21.32	42.64	"	"	"	"	27.90	55.80	11.84	1.32
	3057294 3/11	"	Sacramento	2	12.64	25.28	"	"	"	"	17.04	34.08	8.80	
	3317475 3/ 8	S. F.	Portland	4	3.75	15.00	"	"	"	"	26.96	107.84	92.84	
	3317487 3/12	Portland	S. F.	3	3.75	11.25	"	"	"	"	26.96	80.88	69.63	
	3317489 3/14	S. F.	Portland	1		3.75	"	"	"	"		26.96	23.21	
	3317492 "	"	"	1		3.75	"	"	"	"		26.96	23.21	
8119	2506497 "	"	San Diego	1		17.91	11087	8/21	W 63557	1/24/22		22.19	4.28	
	3057324 3/15	L. A.	Fayetteville, N.C.	1		82.64	"	"	"	"		105.44	22.82	
	3339980 3/13	S. F.	San Antonio	1		52.44	"	"	"	"		66.60	14.16	
8123	2305449 3/ 3	San Pedro	El Paso	2	33.18	66.36	"	"	"	"	39.00	78.00	11.64	
8124	1328880 3/12	S. F.	Omaha	1		45.98	"	"	"	"		63.60	17.62	
8149	2451151 3/17	Monterey	S. F.	3	3.85	11.55	10499	7/21	W 63338	1/3/22	4.44	13.32	1.77	
	2451152 3/20	S. F.	Monterey	1		3.85	"	"	"	"		4.44	.59	
	3032621 3/18	Monterey	S. F.	1		3.85	"	"	"	"		4.44	.59	
	3033361 3/17	S. F.	Riverside	4	13.99	55.60	"	"	"	"	19.14	76.56	20.96	
	3033363 3/18	Riverside	S. F.	2	13.99	27.80	"	"	"	"	19.14	38.28	10.48	
	3033461 3/17	S. F.	Monterey	4	3.85	15.40	"	"	"	"	4.44	17.76	2.36	
	3033462 3/20	Monterey	S. F.	2	3.85	7.70	"	"	"	"	4.44	8.88	1.18	
	3058067 3/21	S. F.	Santa Barbara	1		12.67	"	"	"	"		13.26	.59	
8150	1340088 3/19	Oakland	Des Moines	2	50.13	100.26	11087	8/21	W 63557	1/24/22	69.00	138.00	37.74	
8151	3058931 "	S. F.	Spokane	2	12.04	24.08	16818	8/22	(W 67770	10/28/22)				
									(W 73026	12/ 4/23)	40.44	80.88	56.80	
8306	2312811 3/16	Santa Ana	S. F.	4	13.97	55.88	11087	8/21	W 63557	1/24/22	18.24	72.96	17.08	
	2312823 3/24	Arcadia	"	2	13.23	26.46	"	"	W 73026	12/ 4/23	17.64	35.28	8.82	
8307	2451159 3/26	Monterey	"	2	3.85	7.70	11097	"	W 63364)					
									63365)	1/10/22	4.44	8.88	1.18	
	2451160 3/27	S. F.	Monterey	1		3.85	"	"	"	"		4.44	.59	
	3058013 3/22	"	Tucson	1		30.16	"	"	"	"		40.20	10.04	
	3058009 "	Santa Barbara	S. F.	2	12.67	25.34	"	"	"	"	13.26	26.52	1.18	
	3058015 "	Tucson	"	2	30.16	60.32	"	"	"	"	40.20	80.40	20.08	
	3057308 "	San Pedro	Monterey	4	14.22	56.88	"	"	"	"	14.58	58.32	1.44	
	3057285 3/31	Riverside	S. F.	2	13.90	27.80	"	"	"	"	19.14	38.28	10.48	
	3057310 3/23	Monterey	San Pedro	2	14.22	28.44	"	"	"	"	14.58	29.04	.60	
	3057336 3/31	Riverside	S. F.	2	13.90	27.80	"	"	"	"	19.14	38.28	10.48	
	Marine													
8304	M 166712 3/24	No. Vallejo Mkf.	Portland	2	2.83	5.66	14779 etc.	3/22	M 8257	6/15/22	26.06	52.12	44.46	
	166714 3/26	Portland	No. Vallejo Mkf.	4	2.83	11.32	"	"	"	"	26.06	104.24	92.92	
	War													
8301	MO 3013515 3/25	S. F.	Camp Travis, Tex.	1		52.44	11087	8/21	W 63557	1/24/22		66.60	14.16	
	3057287 "	Riverside	Laredo, Tex.	1		40.32	"	"	"	"		44.89	4.57	
8304	3058949 "	S. F.	Spokane	2	12.04	24.08	16818	8/22	(W 67770	10/28/22)				
									(W 73026	12/ 4/23)	40.44	80.88	56.80	
Totals				186		1258.86						2863.59	1093.43	1.32

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1921, INCLUSIVE

Sheet No. 6

(Covers items originally billed at tariff charges, paid by Disbursing Officer as billed and subsequently reduced by Gen. Accts. Officer by deduction from other bills. Settlement protested by carrier.)

Number and Date of Original Bill	Department Transportation Req. number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare at which Settlement was made Per Capita	Net Fare at which Settlement was made Total Amount	Deduction made from Bill Number	Deduction made from Bill Date	Settlement Number and Date (Settlement Protested) Number	Settlement Number and Date (Settlement Protested) Date	Published Tariff Fare Per Capita	Published Tariff Fare Total Amount	Balance Due Land Grant	Balance Due 35
April 1921	War													
P 8449	WQ 2451163 4/ 3	Monterey	S. F.	2	3.90	7.80	P 17275 etc.	9/22	W 69930	2/20/23	4.44	8.88	1.08	
	2451164 4/ 4	S. F.	Monterey	1		3.90	"	"	"	"		4.44	.54	
	3297357 4/ 7	Riverside	S. F.	2	14.41	28.82	"	"	"	"	19.14	38.28	8.54	.90
8451	3297339 4/ 2	S. F.	Riverside	1		13.89	11087	8/21	W 63557	1/24/22		19.14	5.25	
	3297341 "	"	"	1		13.89	"	"	"	"		19.14	5.25	
8513	3058118 4/ 8	"	San Diego	1		17.91	10086	6/21	W 63650	1/28/22		22.19	4.28	
	3340047 4/ 6	"	Jefferson Bks.Mo.	1		52.14	"	"	W 73026	12/ 4/23		74.11	20.36	1.61
	3340049 "	"	Camp Lewis	1		6.29	"	"	"	"		31.60	25.12	.19
	3340051 "	"	Camp Pike,Ark.	1		51.97	"	"	"	"		73.91	20.33	1.61
8522	3103031 4/ 1	Mason	Camp Grant, Ill.	4	71.24	284.96	11087	8/21	W 63557	1/24/22	74.96	299.84	14.88	
8579	3058123 4/ 9	S. F.	Riverside	2	13.89	27.78	"	"	"	"	19.14	38.28	10.50	
	3058127 4/13	"	Monterey	2	3.85	7.70	"	"	"	"	4.44	8.88	1.18	
8580	3058128 4/10	Monterey	S. F.	1		3.85	"	"	"	"		4.44	.59	
8649	2305911 4/11	L. A.	El Paso	2	32.40	64.80	"	"	"	"	38.22	76.44	11.64	
	3360428 4/19	Eugene	American Lake	3	2.76	8.28	"	"	"	"	9.12	27.36	19.08	
8693	2506522 4/16	S. F.	Yuma	1		18.69	"	"	"	"		28.14	9.45	
8695	3058125 4/10	Riverside	S. F.	1		13.89	"	"	"	"		19.14	5.25	
	3058168 4/16	S. F.	Yuma	1		18.69	"	"	"	"		28.14	9.45	
	3058200 4/19	"	Monterey	2	3.85	7.70	"	"	"	"	4.44	8.88	1.18	
	3058201 "	Monterey	S. F.	1		3.85	"	"	"	"		4.44	.59	
8778	3340058 4/21	S. F.	San Diego	3	17.91	53.73	"	"	"	"	22.19	66.57	12.84	
May 1921	War													
9062	3100328 5/ 7	S. F.	Vale, Ore.	2	20.05	40.10	6820	1/21	W 63040	12/ 9/21	43.26	86.52	46.42	
9103	3058354 5/11	Calexico	S. F.	2	18.84	37.68	"	"	"	"	27.00	54.00	16.32	
	3058345 5/14	S. F.	Calexico	4	18.84	75.36	"	"	"	"	27.00	108.00	32.64	
	3058388 "	"	Monterey	2	3.85	7.70	"	"	"	"	4.44	8.88	1.18	
9179	3058362 5/12	"	San Diego	3	17.91	53.73	11087	8/21	W 63557	1/24/22	22.19	66.57	12.84	
	3058376 5/14	"	Vancouver,Wn.	2	4.12	8.24	"	"	"	"	27.44	54.88	46.64	
	3058421 "	"	Cheyenne	4	43.56	174.24	"	"	"	"	53.70	214.80	40.56	
9227	3058378 5/16	Portland	S. F.	1		3.75	6820	1/21	W 63040	12/ 9/21		26.96	23.21	
	3058389 5/15	Monterey	"	1		3.85	"	"	"	"		4.44	.59	
9375	2505938 5/25	Calexico	L. A.	5	5.90	29.50	17275 etc.	9/22	W 69930	2/20/23	9.96	49.80	20.30	
	2505940 "	L. A.	Calexico	2	5.90	11.80	"	"	"	"	9.96	19.92	8.12	
	3340088 5/31	S. F.	Tucson	2	30.16	60.32	"	"	"	"	40.20	80.40	20.08	
9449	3340083 5/26	"	Vancouver,Wn.	2	4.12	8.24	"	"	"	"	27.44	54.88	46.64	
June 1921	War													
9616	3364536 6/ 2	L. A.	El Paso	2	29.72	59.44	17275 etc.	9/22	W 69930	2/20/23	38.22	76.44	17.00	
9699	2451199 6/12	Monterey	S. F.	2	3.85	7.70	"	"	"	"	4.44	8.88	1.18	
	2451200 6/13	S. F.	Monterey	1		3.85	"	"	"	"		4.44	.59	
9826	3058866 6/16	"	Riverside	2	13.89	27.78	"	"	"	"	19.14	38.28	10.50	
	3058868 6/17	Riverside	S. F.	1		13.89	"	"	"	"		19.14	5.25	
9963	3317532 6/22	Portland	"	3	3.75	11.25	"	"	"	"	26.96	80.88	69.63	
	3317533 6/26	S. F.	Chico	1		3.72	"	"	"	"		6.12	2.40	
10072	3348879 6/27	Oroville	Cheyenne	1		44.34	"	"	"	"		50.46	4.75	1.37
	3360582 6/29	Sacramento	"	4	42.92	171.68	"	"	"	"	50.46	201.84	24.84	5.32
10076	3410679 6/28	S. F.	San Diego	6	17.39	104.34	"	"	"	"	22.19	133.14	25.68	3.12
10075	3317536 "	Chico	Vancouver,Wn.	1		.40	"	"	"	"		21.68	21.28	
10078	3100405 6/25	S. F.	Tacoma	7	6.16	43.12	"	"	"	"	32.16	225.12	180.67	1.33
TOTAL				99		1716.55						2598.71	866.71	15.45

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1921, INCLUSIVE

Sheet No. 7

(Covers items originally billed at tariff charges, paid by Disbursing Officer as billed and subsequently reduced by Gen. Acctg. Officer by deduction from other bills. Settlement protested by carrier.)

Number and Date of Original Bill	Department Transportation Req. number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare at which Settlement was made: Per Capita	Net Fare at which Settlement was made: Total Amount	Deduction made from Bill: Number	Deduction made from Bill: Date	Settlement Number and Date (Settlement Protested): Number	Settlement Number and Date (Settlement Protested): Date	Published Tariff Fare: Per Capita	Published Tariff Fare: Total Amount	Balance Due: Land Grant	Balance Due: SP
July 1921	War													
P 10144	EQ 3317542 7/ 1	S. F.	Portland	7	3.75	26.25	P 17161	8/22	W 70166	2/28/23	26.96	188.72	162.47	
10476	3057395 7/ 2	San Pedro	El Paso	2	29.58	59.16	17012	"	W 68737	11/29/22	39.00	78.00	17.00	1.84
• 10499	3100446 7/20	S. F.	Cincinnati	2	61.74	123.48	10499	7/21	W 63338	1/ 9/22	86.03	172.06	45.26	3.32
	3100453 7/21	"	Washington	5	81.47	407.35	"	"	"	"	106.18	530.90	110.95	12.60
August 1921														
10819	3322644 8/ 5	Sacramento	Salt Lake City	3	32.01	96.03	17012	8/22	W 68737	11/29/22	34.32	102.96		6.93
11296	3374074 8/28	Yuma	" " "	2	47.89	95.78	17410	9/22	W 69793	1/31/23	53.40	106.80	11.02	
Total				21		808.05						2179.44	346.70	24.69

• Original bill reduced by General Accounting Officer

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1921, INCLUSIVE

Sheet No. 8

(Covers items originally billed at tariff charges, paid by Disbursing Officer as billed and subsequently reduced by Disbursing Officer by deduction from other bills.)

Number and Date of Original Bill	Department Transportation Req. number and Date of Service	Journey		Number of Passengers	Net Fare at which Settlement was made		Deduction made from Bill		Settlement Number and Date		Published Tariff Fare		Balance Due	
		From	To		Per Capita	Total Amount	Number	Date	Number	Date	Per Capita	Total Amount	Land Grant	3%
October 1921	War													
P 12178	MQ 3298782 10/15	S. F.	Monterey	1		3.85	P 19300	1/23	FD 171010	3/ 8/23		4.44	.59	
	3298783 10/16	Monterey	S. F.	2	3.85	7.70	"	"	"	"	4.44	8.88	1.18	
December 1921	War													
13381	3707915 12/23	S. F.	Redding	1		3.49	19510	2/23	FD 213271	4/ 6/23		8.46	4.97	
	3707917 12/20	Redding	S. F.	1		3.49	"	"	"	"		8.46	4.97	
February 1922	War													
14293	3317697 2/18	Albany	Vancouver, Wn.	2	.52	1.04	19510	2/23	FD 213271	4/ 6/23	3.38	6.76	5.72	
May 1922	War													
15635	3734695 5/17	S. F.	Monterey	1		3.85	19640	2/23	FD 219035	5/ 3/23		4.44	.59	
	3734696 5/18	Monterey	S. F.	1		3.85	"	"	"	"		4.44	.59	
	3734697 5/17	S. F.	Monterey	2	3.85	7.70	"	"	"	"	4.44	8.88	1.18	
15711	3734705 5/18	"	San Antonio & ret.	1 R.T.		93.73	20155	1/23	FD 223389	5/25/23		119.88	26.15	
	3734708 "	"	San Antonio	1		52.07	"	"	"	"		66.60	14.53	
June 1922	War													
16155	3172834 6/12	Arcadia	Ft. Huachuca	2	25.19	50.38	20155	1/23	FD 223389	5/25/23	27.98	55.96	5.58	
	3734951 6/17	S. F.	San Diego	1		17.91	"	"	"	"		22.19	4.28	
Totals				16		309.06						319.39	70.33	

VOUCHER FOR THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF TROOPS AND SUPPLIES

FROM OCTOBER 1, 1920 TO AUGUST 31, 1921, INCLUSIVE

(Covers items originally billed at war military forces with present system on June of 1921)

Date and Bill of Lading Bill	Government Transportation Request Number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare at which Settlement was made Per Capita	Net Fare at which Settlement was made Total Amount	Settlement Number and Date Number	Settlement Number and Date Date	Railroad Tariff Data Per Capita	Railroad Tariff Data Total Amount	Amount Paid	
August 1921	War											
[illegible]	WR 3106354 8/ 4	Monterey	S. F.	2	3.85	7.70	FD 553716	1/ 23/22	4.44	8.88	7.70	
[illegible]	3106355 8/ 7	S. F.	Monterey	1		3.85	"	"		4.44	3.85	
20975	3057435 8/13	San Pedro	S. F.	2	11.13	22.26	FD 553855	1/ 24/22	17.82	35.64	22.26	.88
[illegible]	3057440 8/13	S. F.	San Pedro	1	11.13	11.13	"	"		17.82	11.13	.44
12078	3106484 8/17	"	Washington D.C.	5	81.07	405.35	FD 551298	1/ 16/22	106.70	533.50	405.35	16.00
12134	3106388 8/20	Monterey	S. F.	2	3.85	7.70	FD 561334	1/ 16/22	4.44	8.88	7.70	
	3106389 8/21	S. F.	Monterey	1	3.85	3.85	"	"		4.44	3.85	
	Marine											
11801	R 180048 8/22	L. A.	No.Vall.Wks.	1		11.90	MC 3189	10/25/21		16.68	4.41	.37
	War											
11888	WR 3106472 8/27	S. F.	Stellarcom,Wn.	27	4.44	109.46	FD 558545	2/ 3/ 22	32.45	551.65	438.90	3.83
	Navy											
21513	R 1411387 8/30	No.Vall.Wks.	San Diego	1		17.10	DO 215946	12/1/ 21		22.07	4.44	.37
September 1921	War											
11347	WR 3317397 9/ 7	Portland	S. F.	24	3.75	90.00	FD 560456	2/ 13/22	26.96	647.04	557.04	
21542	3317402 9/ 8	S. F.	Vancouver,Wn.	8	4.13	33.04	FD 560309	2/ 11/22	27.44	219.52	186.48	
	3446863 9/20	Nogales	El Paso	4	18.39	73.56	"	"	18.96	75.84		2.88
21650	3106388 9/28	S. F.	Red Bluff,Cal.	2	60.18	120.36	FD 568091	2/ 17/22	84.48	167.00	43.92	3.52
October 1921	Navy											
12003	R 1411438 10/3	San Diego	Phoenix	1		19.02	DO 284299	2/ 21/22		25.31	5.70	.57
	War											
12154	WR 3100407 10/18	Oakland	Tacoma	24	6.16	147.84	FD 568688	3/ 14/22	32.38	777.84	630.00	4.56
12412	3100416 10/24	S. F.	Seattle	2	7.36	14.72	FD 567053	3/ 6/ 22	33.94	67.88	53.16	.46
	3340532 10/27	"	San Diego	1	17.39	34.78	"	"	22.19	44.38	9.56	1.00
November 1921	War											
12496	3317631 11/ 4	Portland	S. F.	24	3.75	90.00	FD 568272	3/10/ 22	26.96	647.04	557.04	
12547	3446839 11/ 1	Nogales	El Paso	5	18.39	91.95	FD 569389	3/ 8/ 22	18.96	94.80		2.85
12658	3100642 11/ 9	S. F.	Tacoma	13	6.16	80.08	"	"	32.38	418.68	338.53	2.47
12772	3439015 11/16	Yuma	San Diego	5	10.34	51.70	FD 568266	3/10/ 22	16.15	80.75	27.55	1.80
	3439017 11/18	"	"	2	10.34	20.68	"	"	16.15	32.30	11.02	.80
	Marine											
12966	R 177535 11/21	No.Vall.Wks.	Kansas City	2	42.44	84.88	MC 6070	1/ 10/22	63.60	127.20	39.70	2.88
	War											
12811	WR 3100478 11/29	Reno	S. F.	5	9.95	49.75	FD 571581	3/ 23/22	10.78	53.90		1.55
12813	3439028 11/26	Yuma	San Diego	2	10.34	20.68	"	"	16.15	32.30	11.02	.80
12914	3100476 11/28	S. F.	Carson City	1	11.75	35.25	FD 635580	5/ 1/ 22	12.96	36.18		.93
December 1921	Navy											
13013	R 1411249 12/ 3	San Diego	Phoenix	1		19.02	DO 289241	4/ 12/22		25.31	5.70	.57
13113	1787223 12/ 9	No.Vall.Wks.	Bakersfield	2	8.85	17.70	DO 288767	4/ 7/ 22	10.44	20.88	2.64	.24
	1787227 12/10	Bakersfield	No.Vall.Wks.	3	8.85	26.55	"	"	10.44	31.32	3.96	.33
Totals				167		1,729.88				4,231.81	2,948.34	49.65

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923, INCLUSIVE

Sheet No. 30

(Covers items originally billed at net military fares with protest shown on face of bill)

Number and date of original bill	Department Transportation Req. Number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare at which Settlement was made Per Capita	Net Fare at which Settlement was made Total Amount	Settlement Number and Date Number	Settlement Number and Date Date	Published Tariff Fare Per Capita	Published Tariff Fare Total Amount	Balance Due Land Grant	Balance Due 35
November 1921	War											
13143	WR 3317646 12/16	Portland	Monterey	4	6.92	27.68	FD 571698	1/ 24/22	30.60	123.80	94.68	.84
13179	3106518 12/22	Monterey	S. F. & ret.	2 R.T.	7.70	15.40	FD 623249	4/ 13/22	8.88	17.76	2.36	
	3106519 "	"	S. F.	3	3.85	11.55	"	"	4.44	13.32	1.77	
	3317671 12/25	Portland	"	21	3.75	78.75	"	"	26.96	566.16	487.41	
13469	3317673 12/29	S. F.	Vancouver Wn.	7	4.12	28.84	FD 625331	4/ 20/22	27.44	192.08	163.24	
January 1922	War											
13849	WR 3100772 1/ 28	S. F.	Red Bluff	1		3.44	FD 625573	4/ 21/22		7.20	3.76	
	3100773 1/ 29	Red Bluff	S. F.	2	3.44	6.88	"	"	7.20	14.40	7.52	
13960	3100777 1/ 31	S. F.	La Cross, Wis.	2	43.51	87.02	FD 624773	4/ 17/22	100.11	200.22	113.20	
February 1922	War											
14185	WR 3149809 2/ 14	L. A.	American Lake	2	14.75	29.50	"	"	45.53	91.06	60.64	.92
March 1922	War											
14331	3157518 3/ 7	S. F.	Washington, D.C.	6	81.47	488.82	FD 638329	5/ 11/22	106.18	637.08	133.14	15.12
14578	3106521 3/14	Monterey	S. F.	2	3.85	7.70	FD 638575	5/ 12/22	4.44	8.88	1.18	
	3317738 3/ 8	Portland	"	2	3.75	7.50	"	"	26.96	53.92	46.42	-
14464	3132746 3/13	S. F.	Spokane	2	11.69	23.38	"	"	43.55	87.10	63.00	.72
	3317720 "	"	Vancouver, Wn.	1		4.12	"	"	27.44	27.44	23.32	
14493	3317743 3/20	Portland	S. F.	29	3.75	108.75	FD 641881	5/ 23/22	26.96	781.84	673.09	
14895	3317747 3/23	S. F.	Vancouver, Wn.	8	4.12	32.96	FD 641720	5/ 22/22	27.44	219.52	186.56	
	3446866 3/30	Nogales	El Paso	14	18.39	257.46	"	"	18.96	265.44		7.98
	Navy											
14909	N 1421325 3/23	San Diego	Ft. Bliss, Tex.	1		32.71	DO 295527	6/ 27/22		39.00	5.28	1.01
May 1922	War											
15424	WR 3106572 5/ 2	Monterey	S. F.	5	3.85	19.25	FD 648788	6/ 13/22	4.44	22.20	2.95	
	3106573 5/ 4	S. F.	Monterey	2	3.85	7.70	"	"	4.44	8.88	1.18	
15519	3097479 5/ 9	Arcadia	"	2	13.64	27.28	FD 674356	6/ 27/22	14.34	28.68	.56	.84
	3097480 5/11	Monterey	Arcadia	1		13.58	"	"		14.28	.28	.42
15521	3317779 5/ 9	Portland	S. F.	22	3.75	82.50	FD 19261	7/ 1/ 22	26.96	593.12	510.62	
15598	3317781 5/13	S. F.	Vancouver, Wn.	6	4.12	24.72	"	"	27.44	164.64	139.92	
15845	3745962 5/26	L. A.	Lewis Springs, Ariz.	3	20.96	62.88	FD 23825	7/ 26/22	27.32	81.96	17.19	1.89
June 1922	War											
16133	3106584 6/22	Monterey	S. F.	1		3.85	FD 31324	8/ 19/22		4.44	.59	
	"	"	S. F. & Ret.	1 R.T.		5.20	"	"		6.00	.80	
July 1922	War											
16432	3172878 7/22	S. F.	Arcadia	1		12.63	FD 39495	9/ 25/22		17.64	4.41	.60
16438	3097619 7/24	San Pedro	El Paso	2	29.98	59.16	FD 36797	9/ 14/22	45.18	90.36	29.36	1.84
	3454954 7/28	Monterey	Douglas	3	36.81	110.43	"	"	43.34	130.02	16.23	3.36
TOTAL				158		1,681.84				4,307.84	2,790.66	35.34

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923, INCLUSIVE

Sheet No. 11

(Covers items originally billed at net military fares with protest shown on face of bill)

Number and Date of Original Bill	Department Transportation Req. Number and Date of Service		Journey From	Journey To	Number of Passengers	Net Fare at which Settlement was made Per Capita	Net Fare at which Settlement was made Total Amount	Settlement Number and Date Number	Settlement Number and Date Date	Published Tariff Fare Per Capita	Published Tariff Fare Total Amount	Balance Due Land Grant	Balance Due 3%
August 1922	War												
P 16766	W 3057684	8/ 2	San Pedro	S. F.	1		13.13	FD 39121	9/ 21/22		27.82	4.28	.41
16825	3057698	8/ 5	"	El Paso	5	29.56	147.90	FD 40362	9/ 28/22	45.18	225.90	73.40	4.60
16937	3749003	8/10	S. F.	Denver	1		41.00	W 72924	11/26/23		57.48	15.21	1.27
	3749004	"	"	Denver & ret.	1 R.T.		47.06	"	"		64.00	16.94	
16912	3735349	8/ 8	"	El Paso	1		37.62	FD 44606	10/13/22		55.26	16.48	1.16
	3735351	"	"	"	1		37.62	"	"		55.26	16.48	1.16
17015	3188901	8/19	San Pedro	Columbus N.M.	2	30.66	61.32	FD 160006	1/ 22/23	37.28	74.56	11.34	1.90
17017	3735426	8/17	S. F.	Rantoul, Ill.	1		56.59	FD 49842	10/27/22		80.38	22.20	1.59
	3735427	"	"	"	1		56.59	"	"		80.38	22.20	1.59
17022	2877259	8/15	San Pedro	El Paso	2	29.58	59.16	W 72924	11/28/23	45.18	90.36	29.36	1.84
	2877401	8/17	Colton	"	2	26.31	52.62	"	"	41.94	83.88	29.64	1.62
17058	3172919	8/23	Arcadia	Lenterey	2	13.64	27.28	FD 111550	12/16/22	14.34	28.68	.56	.84
17152	3754451	8/24	S. F.	Denver	2	41.00	82.00	W 70158	2/ 28/23	57.48	114.96	30.42	2.54
	3754453	"	"	"	2	41.00	82.00	"	"	57.48	114.96	30.42	2.54
September 1922	War												
17376	3188923	9/12	San Pedro	San Antonio	3	47.25	141.75	W 69521	1/ 18/23	61.35	184.05	37.92	4.38
	3749066	"	S. F.	Denver & ret.	1 R.T.		76.09	"	"		103.48	27.39	
	3749067	"	"	Denver	1		41.00	"	"		57.48	15.21	1.27
17380	3752381	9/14	"	Ft. Crook, Neb.	1		45.11	FD 158992	1/ 18/23		64.53	18.02	1.40
	3752382	9/15	"	"	1		45.11	"	"		64.53	16.02	1.40
17410	3752418	9/18	"	Arcadia	1		12.83	W 69793	1/ 31/23		17.64	4.41	.40
	3752420	9/19	L. A.	S. F.	1		12.38	"	"		17.04	4.28	.38
	3752421	"	"	"	1		12.38	"	"		17.04	4.28	.38
17411	2242277	9/20	Nogales	San Pedro	1		21.38	FD 111550	12/16/22		27.90	5.86	.65
	2242279	9/21	San Pedro	Nogales	2	21.38	42.76	"	"	27.90	55.80	11.72	1.32
October 1922	War												
17707	3178943	10/ 5	Arcadia	San Antonio	2	45.94	91.88	FD 156992	1/ 18/23	60.02	120.04	25.32	2.84
17706	3752486	"	S. F.	El Paso	1		37.62	"	"		55.26	16.48	1.16
17753	3752511	10/10	"	Marysville	1		3.63	FD 158792	1/ 17/23		4.80	1.17	
17806	3752496	10/19	"	Ft. Sill, Okla.	2	50.88	101.76	W 70906	5/ 5/ 23	68.01	136.02	31.12	3.14
	3752497	"	"	"	2	50.88	101.76	"	"	68.01	136.02	31.12	3.14
	Marine												
17820	M 196239	10/ 9	Stockton	San Diego	3	14.82	44.46	MC 9346	12/13/22	19.67	59.01	13.23	1.32
	War												
17914	WQ 3752584	10/19	S. F.	Ft. Riley, Kans.	1		41.70	FD 112048	12/20/22		63.75	20.76	1.29
	3752585	10/20	"	"	1		41.70	"	"		63.75	20.76	1.29
16028	2979000	10/24	San Pedro	Douglas, Ariz.	4	23.97	95.88	FD 157963	1/ 16/23	30.38	121.52	22.72	2.92
November 1922	War												
16148	2877527	11/ 1	L. A.	El Paso	2	31.43	62.86	FD 158792	1/ 17/23	38.22	76.44	11.64	1.94
	2877531	11/2	"	"	2	31.43	62.86	"	"	38.22	76.44	11.64	1.94
18184	3188958	11/ 9	San Pedro	Fresno	1		6.27	FD 157963	1/ 16/23		10.86	4.40	.19
	3188960	11/12	Fresno	San Pedro	1		6.27	"	"		10.86	4.40	.19
16298	3752512	10/11	Marysville	S. F.	1		3.63	FD 158792	1/ 17/23		4.80	1.17	
	3752513	"	"	"	1		3.63	"	"		4.80	1.17	
18406	3341600	11/24	S. F.	Paso Robles	1		7.09	FD 158992	1/ 18/23		7.68	.59	
	3341603	"	Paso Robles	S. F.	2	7.09	14.18	"	"	7.68	15.36	1.18	
	3752765	11/23	Westwood	"	2	11.34	22.68	"	"	11.69	23.38		.70
18494	3769070	11/29	Tucson	Galveston, Tex.	2	45.37	90.74	FD 160006	1/ 22/23	46.77	93.54		2.80
TOTAL					69		2,093.28				2,837.70	684.91	59.51

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923, INCLUSIVE

Sheet No. 12

(Covers items originally billed at net military fares with protest shown on face of bill)

Number and Date of Original Bill	Department Transportation Req. Number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare at which Settlement was made Per Capita	Net Fare at which Settlement was made Total Amount	Settlement Number and Date Number	Settlement Number and Date Date	Publishes Tariff Fare Per Capita	Publishes Tariff Fare Total Amount	Balance Due Land Grant	Balance Due 3%
December 1922	War											
P 18643	WQ 3152879 12/12	S. F.	Monterey	2	3.85	7.70	FD 160069	1/ 23/23	4.44	8.88	1.18	
	3152880 "	Monterey	S. F.	1		3.85	"	"		4.44	.59	
18746	3157840 12/15	S. F.	Reno	1		9.95	FD 164214	2/ 6/ 23		10.26		.31
	3157842 12/20	Reno	S. F.	2	9.95	19.90	"	"	10.26	20.52		.62
	3169011 12/13	San Pedro	Monterey	2	13.85	27.70	"	"	14.46	28.92	.36	.86
	3189012 12/15	Monterey	San Pedro	1		13.85	"	"		14.46	.18	.43
	3752920 12/19	Salinas	S. F.	2	3.55	7.10	"	"	4.14	8.28	1.18	
	3752921 "	S. F.	Salinas	1		3.55				4.14	.59	
18806	3189025 12/16	San Pedro	San Antonio	2	53.86	107.72	FD 394473	12/15/23	61.35	122.70	11.64	3.34
18806A	3189029 12/15	"	American Lake	2	15.51	31.02	FD 223053	5/ 23/23	46.31	92.62	80.64	.96
January 1923	War O											
19001	3157857 1/ 4	S. F.	Washington, D.C.	3	81.46	244.38	FD 166093	2/ 17/23	106.18	318.54	66.60	7.56
191°C	2301950 1/21	Nogales	El Paso	3	18.39	55.17	FD 169546	3/ 1/ 23	18.96	56.88		1.71
	Marine											
19237	M 205701 1/15	Benicia	Portland	2	2.61	5.22	MC 13653	3/ 21/23	25.76	51.52	46.30	
	205703 1/17	Portland	No.Vall.Whf.	3	2.82	8.46	"	"	26.06	78.18	69.72	
	205727 1/27	No.Vall.Whf.	Portland	2	2.02	5.64	"	"	26.06	52.12	46.48	
	205729 1/29	Portland	No.Vall.Whf.	3	2.82	8.46	"	"	26.06	78.18	69.72	
February 1923	War											
19606	WQ 3753345 2/15	S. F.	L. A.	1		12.38	FD 213765	4/ 11/23		17.04	4.28	.38
March 1923	War											
19925	2301967 3/13	Nogales	El Paso	2	18.39	36.78	FD 219262	5/ 5/ 23	18.96	37.92		1.14
	Marine											
19971	M 205771 3/17	No.Vall.Whf.	Fresno	1		6.40	MC 15766	5/11/ 23		6.60		.20
	205772 "	Fresno	No.Vall.Whf.	2	6.40	12.80	"	"	6.60	13.20		.40
20171	205782 3/31	No.Vall.Whf.	Denver	2	40.95	81.90	MC 12533	5/18/23	57.66	115.32	30.86	2.54
April 1923	War											
20372	WQ 3157957 4/10	S. F.	Carson City	1		11.75	FD 222476	5/28/23		12.06		.31
May 1923	Marine											
20754	M 214716 5/12	No.Vall.Whf.	Portland	2	2.82	5.64	MC 17570	6/26/23	26.06	52.12	46.48	
20853	214720 5/14	Portland	No.Vall.Whf.	3	2.82	8.46	MC 16144	7/ 12/23	26.06	78.18	69.72	
	War											
20892	WQ 2713256 5/17	Nogales	El Paso	7	16.47	115.29	FD 295976	7/ 23/23	16.98	118.86		3.57
June 1923	War											
21144	Wo 3455125 6/ 5	Monterey	Steilacoom, Wn.	2	10.06	20.12	FD 5531	1/ 11/24	35.63	71.26	51.14	
TOTAL				55		871.19				1,473.90	577.68	24.33

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920, TO AUGUST 31, 1923, INCLUSIVE

Sheet No. 13

(Covers items originally billed at net military fares with protest shown on face of bill)

Number and Date of Original Bill	Department Transportation Req. Number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare at which Settlement was made Per Capita	Net Fare at which Settlement was made Total Amount	Settlement Number and Date Number	Settlement Number and Date Date	Published Tariff Fare Per Capita	Published Tariff Fare Total Amount	Balance Due Land Grant	Balance Due 3%
June 1923	Marine											
P 21419	M 214762 6/28	No.Vall.Whf.	Portland	2	2.82	5.64	MC 13729	8/ 29/23	26.06	52.12	46.48	
	214765 6/30	Portland	No.Vall.Whf.	3	2.82	8.46	"	"	26.06	78.18	69.72	
July 1923	War											
21551	WA 3228930 7/ 7	S. F.	Colton & ret.	2 R.T.	15.53	31.06	FD 4964	1/ 8/ 24	21.50	43.00	11.94	
	3228933 "	Colton	S. F.	2	13.82	27.64	"	"	19.14	38.28	10.64	
21773	3794091 7/19	S. F.	Milwaukie, Ore.	1		3.83	FD 306093	9/ 6/ 23		27.23	23.40	
	3794092 7/21	Portland	S. F.	1		3.75	"	"		26.96	23.21	
August 1923	Marine											
22033	M 214795 8/ 4	No.Vall.Whf.	Portland	2	2.82	5.64	MC 19220	9/ 13/23	26.06	52.12	46.48	
	214797 8/ 6	Portland	No.Vall.Whf.	3	2.82	8.46	"	"	26.06	78.18	69.72	
	War											
22271	WQ 3229305 8/15	S. F.	Seattle	1		7.59	FD 399218	2/ 2/ 24		33.54	25.95	
	3229307 "		Vancouver, Wn.	1		4.12	"	"		27.44	23.32	
TOTAL				18		106.19				457.05	350.86	

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923, INCLUSIVE

Sheet No.16

(Covers items originally billed at tariff charges, returned by Disbursing Officer and restated at net fares with protest shown on face of bill.)

Number and Date of Original Bill	Department Transportation Requisition Number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare at which Settlement was made Per Capita	Net Fare at which Settlement was made Total Amount	Settlement Number and Date Number	Settlement Number and Date Date	Published Tariff Fare Per Capita	Published Tariff Fare Total Amount	Balance Due Land Grant	Balance Due 5 or 3%
November 1920	Marine											
P 5701	M 133214 11/ 2	No.Vallejo Whf.	San Diego	1		17.42	(M 54638	4/12/21		21.83	4.41	
6090	116149 11/26	L. A.	No.Vallejo Whf.	1		12.27	(M 9501	12/27/23		16.62	4.35	
December 1920	Marine											
6259	M 116202 12/ 1	Portland	No.Vallejo Whf.	1		2.82	(M 54638 (M 9501	12/27/23		26.06	23.24	
January 1921	Marine											
6850	M 138608 1/ 3	Portland	S. F.	1		3.75	M 55492	5/ 2/21		26.96	23.21	
6984	138626 1/11	Eugene	Portland	1		.03	"	"		4.47	4.44	
	Navy											
7054 A	M 1410728 1/ 3	San Diego	Douglas	2	28.61	57.22	DO 271614	10/31/21	30.60	61.20	3.98	
7176	1410731 1/15	Tucson	San Diego	5	21.90	109.50	DO 271798	11/ 1/21	23.76	118.80	6.00	3.30
7344 A	1410741 1/22	L. A.	Phoenix	1		14.61	DO 274821	11/26/21		20.76	5.70	.45
	Marine											
7347	M 133269 1/30	N.Vallejo Whf.	San Diego	2	16.90	33.80	DO 279976	1/13/22	21.83	43.66	8.82	1.04
February 1921	Navy											
7399	M 1615256 2/ 4	Tucson	San Pedro	6	17.66	105.96	DO 272513	11/ 7/21	23.94	143.64	34.02	3.66
7534	1615254 2/ 7	San Pedro	Tucson	2	17.66	35.32	"	"	23.94	47.88	11.34	1.22
7611	1410775 2/11	Tucson	San Diego	2	21.90	43.80	DO 281438	1/26/22	28.31	56.62	11.44	1.38
March 1921	Navy											
8012	M 1410871 3/10	No.Vallejo Whf.	San Diego	2	17.06	34.12	DO 268162	10/ 1/21	21.83	43.66	8.82	.72
8013	1545789 3/ 5	" " "	Ft.Russell,Wyo.	1		42.01	DO 272678	11/ 8/21		52.98	9.67	1.30
	Marine											
8024	M 133285 3/ 8	No.Vallejo Whf.	San Diego	2	17.06	34.12	DO 271262	10/28/21	21.83	43.66	8.82	.72
8139	133289 3/12	" " "	"	2	17.06	34.12	DO 267781	9/29/21	21.83	43.66	8.82	.72
8182	138178 3/21	L. A.	No.Vallejo Whf.	1		12.27	(MC 1199	8/24/21		16.68	4.41	
	138179 "	"	" " "	1		12.27	(M 9501	12/27/23		16.68	4.41	
	Navy											
8256	M 1410884 3/19	No.Vallejo Whf.	San Diego	2	17.10	34.20	DO 271614	10/31/21	21.83	43.66	8.82	.64
	Marine											
8263	M 133294 3/22	No.Vallejo Whf.	San Diego	2	17.06	34.12	DO 267781	9/29/21	21.83	43.66	8.82	.72
8324 A	138654 3/25	Portland	No.Vallejo Whf.	1		2.82	MC 1199	8/25/21		26.06	23.24	
April 1921	Navy											
8653	M 1410922 4/13	No.Vallejo Whf.	San Diego	2	16.90	33.80	DO 271798	11/ 1/21	21.83	43.66	8.82	1.04
8785	1410918 4/14	Tucson	"	3	21.90	65.70	"	"	28.31	84.93	17.19	2.04
TOTAL				44		776.05				1067.79	252.79	18.95

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1921, INCLUSIVE

Sheet No. 15

(Covers items originally billed at tariff charges, returned by Disbursing Officer and restated at net fares with protest shown on face of bill.)

Number and Date of Original Bill	Department Transportation Req. number and Date of Service	Journey		Number of Passengers	Net Fare at which Settlement was made		Settlement Number and Date		Published Tariff Fare		Balance Due	
		From	To		Per Capita	Total Amount	Number	Date	Per Capita	Total Amount	Land Grant	3%
May 1921	Navy											
P 9190	N 1410945 5/12	No.Vallejo Whf.	San Diego	1		17.07	DO 268162	10/ 1/21		21.83	4.28	.48
	Marine											
9199	M 133326 5/12	No.Vallejo Whf.	San Diego	2	17.06	34.12	DO 267993	9/30/21	21.83	43.66	8.56	.98
June 192	Marine											
9798	M 112066 6/14	S. F.	San Diego	2	17.39	35.82	(MC 4222 (M 9501	11/21/21 12/27/23	22.19	44.38	8.56	
	Navy											
9986	M 1527811 6/29	L. A.	S. F.	2	12.38	24.76	DO 280693	1/19/22	17.04	34.08	8.56	.76
July 1921	Marine											
10362	M 133350 7/11	No.Vallejo Whf.	San Diego	2	17.10	34.20	DO 283505	2/14/22	21.83	43.66	8.56	.90
December 1921	Marine											
13403	M 177372 12/24	Benicia	Portland	2	2.25	4.50	MC 8858	4/ 3/22	25.76	51.52	47.02	
	177374 12/26	Portland	No.Vallejo Whf.	3	2.40	7.20			26.06	78.18	70.98	
TOTAL				14		157.67				317.31	156.52	3.12

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923, INCLUSIVE

Sheet No. 16

(Covers items originally billed at tariff charges, and reduced to net fares by Disbursing Officer.)

Number and Date of Original Bill	Department Transportation Req. number and Date of Service	Journey		Number of Passengers	Net Fare at which Settlement was made		Deduction made from Bill		Settlement Number and Date		Published Tariff Fare		Balance Due	
		From	To		Per Capita	Total Total	Number	Date	Number	Date	Per Capita	Total Amount	Land Grant	U.
November 1920	Navy													
P 6187	N 1492821 11/26	Vallejo	L. A.	1		41.24	P 6187	11/20	DO 241845	3/ 1/21		58.38	15.64	1.50
	Marine													
6195	M 133228 11/24	No.Vallejo Whf.	San Diego	2	16.57	33.14	6195	"	DO 235325	2/ 9/21		43.66	8.82	1.70
December 1920	Navy													
6335	N 1410638 12/ 2	Tucson	San Diego	1		22.58	6335	12/20	Do 241177	3/17/21		28.31	5.73	
	Marine													
6499	M 133252 12/14	No.Vallejo Whf.	"	2	16.57	33.14	6499	"	DO 249684	5/11/21		43.66	8.82	1.70
	Navy													
6784	N 1647609 12/30	S. F.	"	1		17.01	6784	"	N 250c13	5/17/21		22.19	4.28	.90
January 1921	Navy													
6839	N 1616C05 12/26		San Pedro	1		13.13	6839	1/21	N 262464	8/15/21		17.82	4.28	.41
May 1921	Navy													
9253	N 1681164 5/17	No.Vallejo Whf.	Elko	1		23.69	9253	5/21	DO 280693	1/19/22		24.48		.79
	1681166 5/19	Elko	No.Vallejo Whf.	1		23.69	"	"	"	"		24.48		.79
TOTAL				10		207.62						262.98	47.57	7.79

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920, TO AUGUST 31, 1923, INCLUSIVE

Sheet No. 17

(Covers items originally billed at tariff charges refund voucher issued covering alleged overpayment)

Number and Date of Original Bill	Department Transportation Req. Number and Date of service	Journey		Number of Passengers	Net Fare at which Settlement was made		Settlement Number and Date		Published Tariff Fare		Balance Due	
		From	To		Per Capita	Total Amount	Number	Date	Per Capita	Total Amount	Land Grant	3%
June 1921	War											
P 9536	WQ 3340090 6/ 2	Tucson	S. F.	3	30.16	90.48	FD 520147	11/7/ 21	40.20	120.60	30.12	
9899	2548214 6/17	S. F.	San Diego	2	17.91	35.82	"	"	22.19	44.38	8.56	
9962	3317538 6/29	Portland	S. F.	14	3.75	52.50	"	"	26.96	377.44	324.94	
	3106306 6/26	S. F.	Monterey	1		3.85	"	"		4.44	.59	
TOTAL				20		182.65				546.86	364.21	

Sheet No. 18

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF GUARDS AND PRISONERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923 INCLUSIVE

RECAPITULATION

	NUMBER OF PASSENGERS	NET FARE AT WHICH SETTLEMENT WAS MADE TOTAL AMOUNT	PUBLISHED TARIFF FARE TOTAL AMOUNT	BALANCE DUE	
				LAND GRANT	3%
Sheet No. 1	117	$ 1,555.53	$ 2,951.69	$ 1,390.26	1.50
" " 2	109	1,484.22	2,486.83	1,199.90	2.71
" " 3	118	1,455.25	2,383.67	920.63	7.79
" " 4	108	1,062.34	2,366.88	1,303.18	1.36
" " 5	104	1,358.34	2,363.59	1,003.43	1.32
" " 6	97	1,716.55	2,598.71	866.71	19.45
" " 7	21	808.05	1,179.44	346.70	24.69
" " 8	16	249.06	319.39	70.33	
" " 9	167	1,729.88	4,817.87	3,042.34	45.65
" " 10	158	1,681.84	4,507.84	2,750.66	35.34
" " 11	69	2,093.28	2,837.70	684.91	59.51
" " 12	55	871.19	1,473.20	577.68	24.33
" " 13	12	106.19	457.05	350.86	
" " 14	46	776.05	1,047.79	252.79	18.95
" " 15	14	157.67	317.31	156.52	3.12
" " 16	10	207.62	262.98	47.57	7.99
" " 17	20	182.65	546.86	364.21	
GRAND TOTAL	1,245	$ 17,500.61	$ 33,119.80	$ 15,368.68	249.51

RESERVE OFFICERS

Sheet No. 1

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF RESERVE OFFICERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923 INCL.

(Covers items originally billed at tariff charges, paid by Disbursing Officer and subsequently reduced by Gen.Acctg.Office by deduction from other bills. Settlement protested by carrier.)

Number and Date of Original Bill	Department Transportation Req.Number and Date of Service	Journey		Number of Passengers	Net Fare At Which Settlement Was Made		Deduction Made From Bill		Settlement Number and Date (Settlement Protested)		Published Tariff Fare		Balance Due	
		From	To		Per Capita	Total Amount	Number	Date	Number	Date	Per Capita	Total Amount	Land Grant	35%
JUNE 1921	WAR													
P 9961	WQ 2722920 6/25	Los Angeles	San Francisco	1		12.38	17275 etc.	9/22	W 69930	2/20/23		17.04	4.28	.38
	3057373 6/22	"	"	1		12.38	"		"	"		17.04	4.28	.38
	3058929 6/30	"	"	12	12.38	148.56	"		"	"	17.04	204.48	51.36	4.56
	3058931 "	"	"	1		12.38	"		"	"		17.04	4.28	.38
	3058933 "	Long Beach	"	2	13.13	26.26	"		"	"	17.82	35.64	8.56	.82
	3058935 "	Pasadena	"	2	12.71	25.42	"		"	"	17.52	35.04	8.84	.78
10068	3058992 "	Oakland	Camp Lewis	1		6.10	"		"	"		31.42	25.13	.19
TOTAL				20		243.48						357.70	106.73	7.49

RESERVE OFFICERS (Continued)

Sheet No.2

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF RESERVE OFFICERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923 INCL.

(Covers items originally billed at tariff charges, paid by Disbursing Officer as billed and subsequently reduced by Disbursing Officer by deduction from other bills.)

Number and Date of Original Bill	Department Transportation Req. Number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare At Which Settlement Was Made: Per Capita	Net Fare At Which Settlement Was Made: Total Amount	Deduction Made From Bill: Number	Deduction Made From Bill: Date	Settlement Number and Date: Number	Settlement Number and Date: Date	Published Tariff Fare: Per Capita	Published Tariff Fare: Total Amount	Balance Due: Land Grant	Balance Due: 3%
AUGUST 1922	WAR													
P 17061	WQ 3454978 8/23	Del Monte	Los Angeles	1		13.58	20735	5/23	FD 293698	7/14/23		13.74	.16	
	3454980 8/26	"	"	1		13.58	"	"	"	"		13.74	.16	
	3454982 8/25	"	Berkeley	1		4.19	"	"	"	"		4.86	.67	
	3454984 "	"	"	1		4.19	"	"	"	"		4.86	.67	
	3454985 8/26	Monterey	San Francisco	1		3.85	"	"	"	"		4.44	.59	
	3454986 8/25	Del Monte	Sacramento	1		6.79	"	"	"	"		7.38	.59	
	3454987 8/26	"	Placerville	1		9.68	"	"	"	"		10.32	.64	
	3454988 8/27	Monterey	San Francisco	1		3.85	"	"	"	"		4.44	.59	
	3454989 8/25	Del Monte	Los Angeles	1		13.58	"	"	"	"		13.74	.16	
17062	3454992 8/26	"	Richmond	1		4.12	"	"	"	"		4.74	.62	
	3454995 8/25	"	San Francisco	1		3.86	"	"	"	"		4.44	.58	
	3454996 8/27	San Francisco	Montague	1		3.63	"	"	"	"		12.72	9.09	
	3454997 8/26	Del Monte	Oakland	1		3.60	"	"	"	"		4.20	.60	
	3454998 "	"	San Francisco	1		3.86	"	"	"	"		4.44	.58	
	3455001 "	Monterey	Long Beach	1		14.29	"	"	"	"		14.46	.17	
	3455002 "	Del Monte	Alameda	1		3.55	"	"	"	"		4.14	.59	
	3455003 8/25	"	San Francisco	1		3.86	"	"	"	"		4.44	.58	
	3455004 8/26	"	Oakland	1		3.60	"	"	"	"		4.20	.60	
TOTAL				18		117.66						135.30	17.64	

RESERVE OFFICERS Continued)

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF RESERVE OFFICERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923 INCL.

(Covers items originally billed at tariff charges and reduced to net fares by General Accounting Office. Settlement protested by carrier.)

Number and Date of Original Bill	Department Transportation Req. Number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare At Which Settlement Was Made Per Capita	Net Fare At Which Settlement Was Made Total Amount	Deduction Made From Bill Number	Deduction Made From Bill Date	Settlement Number and Date (Settlement Protested) Number	Settlement Number and Date (Settlement Protested) Date	Published Tariff Fare Per Capita	Published Tariff Fare Total Amount	Balance Due Land Grant	Balance Due 3%
JULY 1923	WAR													
P 21618	WQ 3749303 7/ 6	Riddle	Seattle	1		3.87	21618	7/23	W 74067	3/12/24		14.76	10.89	
	3749307 "	"	"	1		3.87	"	"	"	"		14.76	10.89	
21767	3455153 7/20	Del Monte	San Francisco	1		3.84	P 21767	"	W 74312	3/29/24		4.44	.60	
	3455154 7/21	"	Los Angeles	1		13.56	"	"	"	"		13.74	.18	
	3455155 7/20	"	"	1		13.56	"	"	"	"		13.74	.18	
	3455156 7/21	"	So Pasadena	1		13.42	"	"	"	"		14.10	.27	.41
	3455157 7/20	"	Los Angeles	1		13.56	"	"	"	"		13.74	.18	
	3455161 7/21	"	Oakland	1		3.60	"	"	"	"		4.20	.60	
	3455163 7/20	"	Los Angeles	1		13.56	"	"	"	"		13.74	.18	
	3455167 7/21	"	Fresno	1		8.73	"	"	"	"		9.30	.57	
	3455169 "	"	Dallas	1		8.03	"	"	"	"		29.37	21.34	
	3455170 "	"	Los Angeles	1		13.56	"	"	"	"		13.74	.18	
	3455172 7/20	"	Davis	1		6.61	"	"	"	"		7.20	.59	
	3455173 7/21	"	Santa Ana	1		14.35	"	"	"	"		14.94	.18	.41
	3455174 "	"	San Francisco	1		3.84	"	"	"	"		4.44	.60	
	3455202 "	"	Berkeley	1		3.96	"	"	"	"		4.56	.60	
	3455203 7/22	"	Chowchilla	1		7.41	"	"	"	"		7.98	.57	
	3455204 7/20	"	Alhambra	1		13.75	"	"	"	"		14.04	.29	
	3455206 7/21	"	San Francisco	1		3.84	"	"	"	"		4.44	.60	
	3455207 "	"	Los Angeles	1		13.56	"	"	"	"		13.74	.18	
	3455208 "	"	Berkeley	1		3.96	"	"	"	"		4.56	.60	
	3455213 7/20	"	San Francisco	1		3.84	"	"	"	"		4.44	.60	
	3455215 7/21	"	Lindsay	1		10.89	"	"	"	"		13.62	2.73	
	3455216 "	"	Whittier	1		14.30	"	"	"	"		14.46	.16	
	3455217 "	"	Oakland	1		3.60	"	"	"	"		4.20	.60	
	3455221 "	"	San Francisco	1		3.84	"	"	"	"		4.44	.60	
21768	3455222 "	"	Bakersfield	1		10.94	21768	"	W 74086	3/13/24		13.20	1.92	.34
	3455223 "	"	San Francisco	1		3.84	"	"	"	"		4.44	.60	
	3455225 "	"	Los Angeles	1		13.56	"	"	"	"		13.74	.18	
	3455252 "	"	San Jose	1		2.11	"	"	"	"		2.70	.59	
	3455253 "	"	Los Angeles	1		13.56	"	"	"	"		13.74	.18	
21769	3455250 "	"	San Francisco	1		3.84	21769	"	W 74025	3/10/24		4.44	.60	
	3455257 "	"	Berkeley	1		3.96	"	"	"	"		4.56	.60	
	3455260 "	"	Redlands	1		14.43	"	"	"	"		16.20	1.32	.45
	3455266 "	"	Sacramento	1		5.90	"	"	"	"		6.42	.52	
21777	3084330 7/ 5	Glendora	Del Monte	1		14.14	21777	"	P 74024	3/10/24		14.76	.18	.44
	3228748 7/20	Los Angeles	San Francisco	1		12.38	"	"	"	"		17.04	4.28	.38
	3455201 7/21	Del Monte	"	1		3.84	"	"	"	"		4.44	.60	
	3455251 "	"	Alameda	1		3.54	"	"	"	"		4.14	.60	
	3749835 7/ 6	Bakersfield	Del Monte	1		11.28	"	"	"	"		15.36	4.08	
21778	3228993 7/21	San Francisco	Los Angeles	1		12.38	21778	"	W 74065	3/12/24		17.04	4.28	.38
21779	3455262 "	Monterey	Covina	1		14.13	21779	"	W 74066	3/12/24		14.58	.45	
21846	3749830 7/ 2	Alameda	American Lake	1		6.42	21846	"	W 74068	3/12/24		31.73	25.11	.20
	3806015 7/ 7	Gervais	"	1		2.76	"	"	"	"		6.06	3.30	
21883	3084354 7/ 8	Pasadena	Del Monte	1		13.54	21883	"	W 74313	3/29/24		14.22	.26	.42
	3084307 7/ 6	Whittier	"	1		14.30	"	"	"	"		14.46	.16	
	3228725 7/27	Roseburg	San Francisco	1		3.69	"	"	"	"		19.82	16.13	
	3228733 "	Dallas	"	1		4.28	"	"	"	"		25.59	21.31	
	3228735 7/25	Los Angeles	"	1		12.38	"	"	"	"		17.04	4.28	.38
	3228738 "	"	"	1		12.38	"	"	"	"		17.04	4.28	.38
	3228740 7/21	Greenwood	"	1		15.54	"	"	"	"		16.14	.60	
	3228753 7/27	Los Angeles	"	1		12.38	"	"	"	"		17.04	4.28	.38
	3228763 7/28	"	"	1		12.38	"	"	"	"		17.04	4.28	.38
	3228783 7/25	Springbrook	"	1		4.68	"	"	"	"		27.89	23.21	
	3228870 7/ 5	Bartells	Del Monte	1		14.18	"	"	"	"		14.34	.16	
	3084349 7/ 8	Alhambra	"	2		13.81	"	"	"	"		14.10	.29	
21884	3229038 7/26	Los Angeles	San Francisco	1		12.38	21884	"	74064	3/12/24		17.04	4.28	.38
	3229069 7/28	Pasadena	"	1		12.78	"	"	"	"		17.52	4.35	.39
	3455254 7/23	San Francisco	Wood	1		3.60	"	"	"	"		11.70	8.10	
	3455272 "	"	Dunsmuir	1		3.57	"	"	"	"		10.74	7.17	
	3749866 7/ 6	Dallas	Del Monte	1		7.75	"	"	"	"		30.03	22.28	
Totals				61		569.54						783.03	189.77	5.72

RESERVE OFFICERS (Continued)

Sheet No. 4

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF RESERVE OFFICERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923 INCL.

(Covers items originally billed at tariff charges and reduced to net fares by general Accounting Office. Settlement protested by carrier.)

Number and Date of Original Bill	Department Transportation Req. Number and Date of Service	Journey		Number of Passengers	Net Fare At Which Settlement Was Made		Deduction Made From Bill		Settlement Number and Date (Settlement Protested)		Published Tariff Fare		Balance Due	
		From	To		Per Capita	Total Amount	Number	Date	Number	Date	Per Capita	Total Amount	Land Grant	3%
	WAR													
JULY 1923														
21885	WQ 3084342 7/ 7	Redonde Beach	Del Monte	1		13.91	21885	9/23	W 74069	3/12/24		14.52	.18	.43
21967	3455255 9/21	Del Monte	Corte Madera	1		4.32	21967	"	W 74087	3/13/24		4.92	.60	
	3455256 "	"	Murrietta	1		17.78	"	"	"	"		18.47	.53	.16
	3455258 "	"	Mill Valley	1		4.32	"	"	"	"		4.92	.60	
	3455261 "	"	San Diego	1		18.71	"	"	"	"		18.89	.18	
	3455263 "	"	Escondido	1		17.68	"	"	"	"		17.86	.18	
21968	3455160 "	"	San Diego	1		18.71	21968	"	W 74314	3/29/24		18.89	.18	
	3455165 "	"	"	1		18.71	"	"	"	"		18.89	.18	
	3455166 "	"	Sonora	1		9.92	"	"	"	"		9.48	.56	
	3455168 "	"	Walla Walla	1		15.27	"	"	"	"		39.16	23.70	.19
	3455175 "	"	San Diego	1		18.71	"	"	"	"		18.89	.18	
	3455205 "	"	Eureka, Calif.	1		13.24	"	"	"	"		18.84	.60	
	3455210 "	"	San Diego	1		18.71	"	"	"	"		18.89	.18	
	3455271 9/24	San Francisco	Lewistown, Mont.	1		37.74	"	"	"	"		60.95	23.21	
TOTAL				14		231.73						283.57	51.06	.78

RESERVE OFFICERS (Continued)

Sheet No. 5

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF RESERVE OFFICERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923 INCL.

(Covers items originally billed at gross fares, returned by Disbursing Officer, restated at net military fares with protest shown on face of bill.)

Number and Date of Original Bill	Department Transportation Req. Number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare At Which Settlement Was Made: Per Capita	Net Fare At Which Settlement Was Made: Total Amount	Deduction Made From Bill: Number	Deduction Made From Bill: Date	Settlement Number and Date: Number	Settlement Number and Date: Date	Published Tariff Fare: Per Capita	Published Tariff Fare: Total Amount	Balance Due: Land Grant	Balance Due: 3%
AUGUST 1922	WAR													
P 17059	WQ 3377843 8/26	Sacramento	Los Angeles	1		11.50			FD 47517	10/25/22		16.26	4.40	.36
	3377844 8/25	"	"	1		11.50			"	"		16.26	4.40	.36
	3377845 "	"	"	1		11.50			"	"		16.26	4.40	.36
	3377846 8/27	"	"	1		11.50			"	"		16.26	4.40	.36
17154	3377839 8/24	"	Bellevue, Ida.	1		42.95			"	"		44.28		1.33
	3377841 8/25	"	San Diego	1		16.52			"	"		21.41	4.40	.49
	3377842 8/26	"	Deer Lodge, Mont.	1		47.35			"	"		48.81		1.46
SEPTEMBER 1922														
17304	3127908 9/ 8	Del Monte	Los Angeles	1		13.58			"	"		13.74	.16	
JULY 1923														
21969	3455273 7/23	"	San Diego	1		18.19	P 21969	7/23	FD 7547	1/21/24		18.89	.16	.54
AUGUST 1923														
22123	3229206 8/ 6	San Francisco	Pasadena	1		12.73	P 22123	8/23	FD 7547	"		17.52	4.41	.38
	3229208 "	"	Los Angeles	1		12.38	"	"	"	"		17.04	4.28	.38
	3229210 "	"	"	1		12.38	"	"	"	"		17.04	4.28	.38
	3229211 "	"	El Segundo	1		12.98	"	"	"	"		17.64	4.28	.38
	3229212 "	"	Roseburg	1		3.69	"	"	"	"		19.82	16.13	
	3229213 "	"	Los Angeles	1		12.38	"	"	"	"		17.04	4.28	.38
	3229214 "	"	Dallas	1		4.27	"	"	"	"		25.59	21.32	
	3229220 "	"	Los Angeles	1		12.38	"	"	"	"		17.04	4.28	.38
	3229221 "	"	Owensmouth	1		15.56	"	"	"	"		16.14	.58	
22124	3229222 "	"	Springbrook	1		4.28	P 22124	8/23	FD 7547	"		26.73	22.45	
	3229223 "	"	Los Angeles	1		12.38	"	"	"	"		17.04	4.28	.38
	3455328 8/ 8	Monterey	"	1		13.52	"	"	"	"		13.68	.16	
	3749825 6/19	Weed	Del Monte	1		6.65	"	"	"	"		14.88	8.23	
22185	3229207 8/ 8	San Francisco	Helena	1		18.49						53.32	34.83	
	3229209 8/11	"	San Diego	1		17.39						22.19	4.28	.52
	3229224 8/10	"	Great Falls	1		33.65						56.86	23.21	
	3229225 "	"	Layton, Utah	1		35.15						36.24		1.09
	3229226 "	"	Lewistown, Mont.	1		37.74						60.95	23.21	
	3229228 8/ 9	"	Melba	1		21.03						44.89	23.86	
	3229268 8/12	"	Craig	1		30.35						58.75	28.40	
22310	3455159 8/20	Del Monte	Los Angeles	1		13.58	P 22310	8/23	FD 7547	"		13.74	.16	
	3473192 8/23	"	San Francisco	1		3.84	"	"	"	"		4.44	.60	
TOTAL				31		531.39						800.75	259.83	9.53

RESERVE OFFICERS (Continued)

Sheet No. 6

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF RESERVE OFFICERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1921 INCL.

(Covers items originally billed at tariff charges, refund voucher issued covering alleged overpayment.)

Number and Date of Original Bill	Department Transportation Req. Number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare At Which Settlement Was Made: Per Capita	Net Fare At Which Settlement Was Made: Total Amount	Deduction Made From Bill: Number	Deduction Made From Bill: Date	Settlement Number and Date: Number	Settlement Number and Date: Date	Published Tariff Fare: Per Capita	Published Tariff Fare: Total Amount	Balance Due: Land Grant	Balance Due: 3%
JUNE 1921	WAR													
P 9777	WQ 3107177 6/14	Corvallis	Camp Knox, Ky.	1		54.08			FD 520147	11/ 7/21		93.61	38.20	1.33
9778	3416144 6/ 9	Eugene	Camp Lewis	1		2.80			" "	"		9.12	6.32	
	3416145 "	"	"	1		2.80			" "	"		9.12	6.32	
9833	2305167 6/15	Tucson	Monterey	1		30.44			" "	"		36.90	5.83	.63
	2305168 "	"	"	1		30.44			" "	"		36.90	5.83	.63
	3107252 6/14	Corvallis	"	17	7.50	127.50			" "	"	28.31	481.27	353.77	
	3107254 "	"	San Francisco	13	4.14	53.82			" "	"	24.47	318.11	264.29	
TOTAL				35		301.88						985.03	680.56	2.39

RESERVE OFFICERS (Concluded)

Sheet No. 7

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF RESERVE OFFICERS

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923 INCLUSIVE

RECAPITULATION

	NUMBER OF PASSENGERS	NET FARE AT WHICH SETTLEMENT WAS MADE TOTAL AMOUNT	PUBLISHED TARIFF FARE TOTAL AMOUNT	BALANCE DUE	
				LAND GRANT	5 OR 3 %
Sheet No. 1	20	$ 243.48	$ 357.70	$ 106.73	7.49
" " 2	18	117.66	135.30	17.64	
" " 3	61	549.54	783.03	239.77	5.72
" " 4	14	231.73	283.57	51.06	.98
" " 5	31	531.39	800.75	259.81	9.53
" " 6	35	301.88	985.03	680.56	2.59
GRAND TOTAL	179	$ 1,973.68	$ 3,345.38	$ 1,345.59	26.11

NAVY NURSES

Sheet No. 1

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF NAVY NURSES

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923 INCL.

(Covers items originally billed at tariff charges, paid by Disbursing Officer as billed and subsequently reduced by Disbursing Officer by deduction from other bills.)

Number and Date of Original Bill	Department Transportation Req. Number and Date of Service	Journey		Number of Passengers	Net Fares At Which Settlement Was Made		Deduction Made From Bill		Settlement Number and Date		Published Tariff Fare		Balance Due	
		From	To		Per Capita	Total Amount	Number	Date	Number	Date	Per Capita	Total Amount	Land Grant	5%
NOVEMBER 1920	NAVY													
P 6186	M 805258 11/29	Mo Vallejo Wharf	Gulfport, Miss.	1		62.75	7232	1/21	DO 239360	3/ 9/21		82.10	17.35	2.00
NOVEMBER 1922														
Cash fare	5151 & 58470	San Francisco	San Diego	1		17.91	18159	11/22	DO 118746	5/ 5/23		22.19	4.28	

NAVY NURSES (Continued)

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF NAVY NURSES

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923 INCLUSIVE

(Covers items originally billed at net military fares with protest shown on face of bill.)

Number and Date of Original Bill	Department Transportation Req. Number and Date of Service	Journey		Number of Passengers	Net Fare At Which Settlement Was Made		Deduction Made From Bill		Settlement Number and Date		Published Tariff Fare		Balance Due	
		From	To		Per Capita	Total Amount	Number	Date	Number	Date	Per Capita	Total Amount	Land Grant	
November 1921	NAVY													
12782	N 1472256 11/19	San Francisco	Great Lakes, Ill.	1		59.85			DO 295427	6/26/22		82.16	22.31	
February 1922														
F 14230	1727629 2/ 5	No. Vallejo Wharf	San Pedro	1		12.66			DO 292843	5/24/22		17.46	4.41	.39
March 1922														
14907	1509457 3/30	"	Chehalis, Wn.	1		4.58			DO 295517	6/27/22		29.44	24.86	
April 1922														
15133A	1582544 4/12	"	Great Lakes, Ill.	1		59.65			N 306416	11/29/22		82.16	22.51	
	1582549 4/14	"	"	1		59.65			"	"		82.16	22.51	
June 1922														
16002	1005764 6/12	Los Angeles	No. Vallejo Whf	1		12.27			DO 310694	1/22/23		16.68	4.41	
August 1922														
17027	1569697 8/17	San Francisco	Bremerton	1		8.04			DO 307630	12/15/22		34.26	25.99	.23
October 1922														
17721	1755960 10/ 2	"	Seattle	1		7.59			DO 315489	3/27/23		33.54	25.95	
November 1922														
18265	1755958 11/10	"	"	1		7.59			DO 315054	3/21/23		33.54	25.95	
December 1922														
18722	1472492 12/ 8	San Pedro	Cleveland, O.	1		68.79			DO 316236	4/ 5/23		92.04	23.25	
18820	1472496 12/18	No Vallejo Whf	San Diego	1		17.42			DO 315995	4/ 3/23		21.83	4.41	
February 1923														
19614	1686246 2/16	San Francisco	Bremerton	1		8.27			DO 321291	6/ 1/23		34.26	25.99	
March 1923														
20040	1790795 3/15	No Vallejo Whf	San Diego	1		17.42			DO 327805	8/24/23		21.83	4.41	
April 1923														
20220	845805 4/ 3	Lemoore	San Francisco	1		8.23			DO 12423	12/18/23		8.58	.35	
20471	845812 4/20	San Francisco	San Diego	1		17.91			DO 330048	9/21/23		22.19	4.28	
May 1923														
20807	845884 5/14	No Vallejo Whf	Seattle	1		6.76			DO 4985	10/ 4/23		32.70	25.94	
20958	845886 5/10	San Pedro	No Vallejo Whf	1		13.05			DC 5439	10/ 9/23		17.46	4.41	
	845888 "	"	"	1		13.05			"	"		17.46	4.41	
June 1923														
21251	1879604 6/11	San Francisco	San Diego	1		17.91			DO 6103	10/15/23		22.19	4.28	
	1879606 "	"	"	1		17.91			"	"		22.19	4.28	
21361	1879634 6/20	No Vallejo Whf	Philadelphia	1		86.01			"	"		108.43	22.42	
	1879638 "	"	"	1		86.01			"	"		108.43	22.42	
TOTAL				22		610.62						940.99	329.75	.62

NAVY NURSES (Continued)

Sheet No. 3

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF NAVY NURSES

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923 INCLUSIVE

(Covers items originally billed at net military fares with protest shown on face of bill.)

Number and Date of Original Bill	Department Transportation Req. Number and Date of Service	Journey		Number of Passengers	Net Fare At Which Settlement Was Made		Deduction Made From Bill		Settlement Number and Date		Published Tariff Fare		Balance Due	
		From	To		Per Capita	Total Amount	Number	Date	Number	Date	Per Capita	Total Amount	Land Grant	
JULY 1923	NAVY													
21741	S 995915 7/12	Tucson	San Diego	1		22.48			DO 10754	12/ 1/23		28.21	5.73	
21983	988516 7/31	San Francisco	"	1		17.91			"	"		22.19	4.28	
AUGUST 1923														
P 22094	995959 8/ 7	No Vallejo Wharf	Bremerton	1		7.43			DO 6198	10/16/23		33.37	25.94	
	995961 "	"	"	1		7.43			"	"		33.37	25.94	
22171	1790490 8/ 9	"	Toledo	1		64.98			"	"		87.40	22.42	
TOTAL				5		120.23						204.54	84.31	

NAVY NURSES (Continued)

Sheet No. 4

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF NAVY NURSES

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923 INCLUSIVE

(Covers items originally billed at tariff charges, paid by Disbursing Officer and subsequently reduced by Gen.Acctg.Office by deduction from other bills. Settlement protested by carrier.)

Number and Date of Original Bill	Department Transportation Req.Number and Date of Service	Journey		Number of Passengers	Net Fare At Which Settlement Was Made		Deduction Made From Bill		Settlement Number and Date (Settlement Protested)		Published Tariff Fare		Balance Due	
		From	To		Per Capita	Total Amount	Number	Date	Number	Date	Per Capita	Total Amount	Land Grant	3%
APRIL 1922	NAVY													
P 8937	N 2817369 4/25	San Francisco	Le Roy, N Y.	100 lbs		12.75	P 11089	8/21	W 63557	1/24/22		16.37	3.62	
	2817385 4/28	"	Buffalo, N Y.	1.		72.16	"		"	"		96.53	22.14	2.23
	2817389 4/27	"	"	45 lbs		5.58	"		"	"		7.24	1.66	
TOTAL				1		90.49						120.14	27.42	2.23

NAVY NURSES (Continued)

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF NAVY NURSES

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1921 INCLUSIVE

(Covers items originally billed at tariff charges returned by Disbursing Officer and restated at net fares with protest shown on face of bill)

Number and Date of Original Bill	Department Transportation Req. Number and Date of Service	Journey		Number of Passengers	Net Fare At Which Settlement Was Made		Deduction Made From Bill		Settlement Number and Date		Published Tariff Fare		Balance Due	
		From	To		Per Capita	Total Amount	Number	Date	Number	Date	Per Capita	Total Amount	Land Grant	3%
MARCH 1921	NAVY													
P 8261	N 1306083 3/16	No Vallejo Wharf	Mt Pleasant, Tex.	1		51.36			DO 271911	11/ 2/21		71.15	18.20	1.59
SEPTEMBER 1921														
11769	1636027 9/23	San Francisco	San Pedro	1		13.54			DO 291264	5/ 5/22		17.82	4.28	
	1647676 9/28	San Pedro	No Vallejo Wharf	1		13.05			"	"		17.46	4.41	
OCTOBER 1921														
12136	988361 10/14	San Francisco	Philadelphia	1		86.17			DO 291451	5/ 8/22		108.43	22.26	
12431	1481984 10/28	No Vallejo Wharf	Dallas, Tex.	1		49.55			DO 292643	5/24/22		66.60	17.05	
	1682569 "	"	"	1		49.55			"	"		66.60	17.05	
JANUARY 1922														
13514	1297260 1/3	No Vallejo Wharf	Los Angeles	1		12.27			DO 294904	5/19/22		16.68	4.41	
TOTAL				9		275.49						364.74	87.66	1.59

NAVY NURSES (Concluded)

Sheet No. 6

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF NAVY NURSES

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923 INCLUSIVE

RECAPITULATION

	NUMBER OF PASSENGERS	NET FARE AT WHICH SETTLEMENT WAS MADE TOTAL AMOUNT	PUBLISHED TARIFF FARE TOTAL AMOUNT	BALANCE DUE	
				LAND GRANT	5 OR 3 %
Sheet No. 1	9	$ 80.64	$ 104.29	$ 21.63	2.00
" " 2	22	610.62	940.99	329.75	.62
" " 3	5	120.23	204.54	84.31	
" " 4	1	90.49	120.14	27.42	2.23
" " 5	7	275.49	361.74	87.66	1.59
GRAND TOTAL	37	$ 1,177.49	1,734.70	$ 550.77	6.44

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF WAR ENGINEERS NON-MILITARY DUTY Sheet No. 1

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923 INCL.

(Covers items originally billed at not military fares with protest shown on face of bill.)

Number and Date of Original Bill	Department Transportation Req. Number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare At Which Settlement Was Made Per Capita	Net Fare At Which Settlement Was Made Total Amount	Deduction Made From Bill Number	Deduction Made From Bill Date	Settlement Number and Date Number	Settlement Number and Date Date	Published Tariff Fare Per Capita	Published Tariff Fare Total Amount	Balance Due Land Grant	Balance Due All
[illegible]	WAR ENGINEERS													
[illegible]	15978 9/13	Portland	Marshfield & Ret	1 R/T		10.28			W 63858	2/11/22		20.56	10.28	
[illegible]	18985 10/ 5	"	Newport & Ret	1 R T		6.74			W 63430	1/20/22		13.38	5.56	
[illegible]	18621 7/31	Los Angeles	San Fran & Ret	1 R T		16.85			W 69639	10/23/22		22.50	5.65	
[illegible]	18622 9/ 6	"	"	1 R T		16.85			W 69328	1/11/23		22.50	5.65	
[illegible]	18623 9/26	"	"	1 "		14.23			W 69825	2/ 6/23		19.00	4.77	
[illegible]	18625 11/27	"	"	1 R T		16.85			W 70258	3/10/23		22.50	5.65	
[illegible]	24320 11/20	San Francisco	Redding	1		3.49						8.46	4.97	
[illegible]	18626 12/28	Los Angeles	San Fran & Ret	1 R T		18.72			"	"		25.00	6.28	
[illegible]	18631 1/ 3	"	Yuma & Ret	1 R T		10.84			T -71435-F	7/13/23		22.50	11.66	.34
[illegible]	18632 "	"	"	1 "		10.84						22.50	11.66	.34
[illegible]	18636 1/24	"	San Fran & Ret	1 R T		18.72			W 71538	7/20/23		25.00	6.28	
[illegible]	18637 1/31	"	"	1 "		14.23			W 71980	8/31/23		19.00	4.77	
[illegible]	18640 2/12	"	San Luis Obispo and Ret	1 R T		15.84			Dept. of Interior Comm Division #1215			15.84	.38	
[illegible]	18641 2/11	"	San Fran & Ret	1 "		16.85			W 72945	11/27/23		22.50	5.65	
				13		198.37						270.00	97.23	.68

WAR ENGINEERS——NON-MILITARY DUTY (Continued)

Sheet No. 2

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF WAR ENGINEERS
NON-MILITARY DUTY
PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923 INCL.

(Covers items originally billed at tariff charges returned by Disbursing Officer and restated at net fares with protest shown on face of bill.)

Number and Date of Original Bill	Department Transportation Req. Number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare At Which Settlement Was Made Per Capita	Net Fare At Which Settlement Was Made Total Amount	Deduction Made From Bill Number	Deduction Made From Bill Date	Settlement Number and Date Number	Settlement Number and Date Date	Published Tariff Fare Per Capita	Published Tariff Fare Total Amount	Balance Due Land Grant	Balance Due 3%
MARCH 1921	WAR ENGINEERS													
P 8127	WE 9292 3/ 8	Portland	Newport	1		3.37			W 61868	9/ 9/21		6.15	2.78	
APRIL 1921														
8700	8941 4/21	San Francisco	Los Angeles	1		12.38			W 61867	9/ 9/21		17.04	4.28	.38
8832	8940 4/19	Los Angeles	San Francisco	1		12.38			"	"		17.04	4.28	.38
8833	9294 3/10	Sierra	Portland	1		2.41			W 61868	"		5.19	2.78	
MAY 1921														
8985	9298 5/ 2	Portland	San Francisco	1		3.75			"	"		26.96	23.21	
9107	8942 5/13	San Francisco	Grants Pass	1		3.65			W 61866	"		16.26	12.61	
9109	18955 5/10	Grants Pass	Portland	1		.03			W 61868	"		10.71	10.68	
9241	8943 5/20	"	San Francisco	1		3.65			W 61514	8/ 8/21		16.26	12.61	
JUNE 1921														
9834	11596 6/17	Yuma	Los Angeles	1		5.59			W 61867	9/ 9/21		11.10	5.51	
9835	13964 6/13	Portland	Marshfield & Ret	1 R T		10.28			W 61868	"		20.62	10.34	
9914	11595 6/16	Los Angeles	Yuma	1		8.80			W 63138	12/15/21		13.46	4.66	
APRIL 1922														
15178	24430 4/19	San Francisco	Portland	1		3.75			WE 2151	5/12/23		26.96	23.21	
MAY 1922														
15751	18617 5/31	Los Angeles	San Fran. & Ret	1 R T		16.85			W 67500	10/11/22		22.50	5.65	
JULY 1922														
16341	18620 7/ 6	Los Angeles	San Fran. & Ret	1 R T		16.85			"	"		22.50	5.65	
				14		103.74						232.75	128.25	.76

WAR ENGINEERS——NON-MILITARY DUTY (Continued)

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF WAR ENGINEERS ON NON-MILITARY DUTY.

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1921 INCL.

(Covers items billed at net military fares. No protest shown on face of bill. Omission to note protest on these bills was a clerical error as instructions of this office required that protest be shown.)

Number and Date of Original Bill	Department Transportation Req. Number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare At Which Settlement Was Made Per Capita	Net Fare At Which Settlement Was Made Total Amount	Deduction Made From Bill Number	Deduction Made From Bill Date	Settlement Number and Date Number	Settlement Number and Date Date	Published Tariff Fare Per Capita	Published Tariff Fare Total Amount	Balance Due Land Grant	Balance Due M
NOVEMBER 1920	WAR ENGINEERS													
P 5746	RE 8921 11/12	Monterey	San Francisco	1		3.85			W 59800	2/10/21		4.44	.59	
5761	8920 11/10	San Francisco	Monterey	1		3.85			W 59554	2/15/21		4.44	.59	
6049	9273 11/27	Portland	Reedsport	1		3.85			W 60397	4/20/21		8.93	5.08	
	9276 11/29	Marshfield	Portland	1		5.13						10.31	5.18	
DECEMBER 1920														
6489	9278 12/14	Portland	Newport, Ore. & Ret	1 R T		6.72			W 59858	2/15/21		12.30	5.58	
6674 C	13696 12/28	"	Eugene & Ret	1 "		.06			"	"		6.94	6.88	
JANUARY 1921														
7232	18206 1/17	Portland	San Francisco	1		3.76			W 60118	3/19/21		26.96	23.20	
	18207 1/25	San Francisco	Portland	1		3.76			"	"		26.96	23.20	
FEBRUARY 1921														
7528	8931 2/14	Santa Barbara	San Francisco	1		12.67			W 60286	3/30/21		13.26	.59	
	8932 "	San Francisco	San Luis Obispo	1		8.41			"	"		9.00	.59	
9665	9285 2/15	Portland	Marshfield & Ret	1 R T		10.26			W 60269	4/ 4/21		20.62	10.36	
MARCH 1921														
7735	11585 3/ 1	Los Angeles	Yuma	1		5.42			W 60324	4/12/21		11.10	5.51	.17
	11584 3/ 2	Yuma	Los Angeles	1		5.59			"	"		11.10	5.51	
AUGUST 1921														
11181	21431 8/24	Portland	Harrisburg & Ret	1 R T		.04			W 64387	9/21/21		7.64	7.60	
SEPTEMBER 1921														
11478	21438 9/14	Portland	Galveston, Tex.	1		52.16			"	"		89.52	37.36	1.41
11480	21609 9/15	San Francisco	Grants Pass	1		3.65			W 64822	9/21/21		16.86	12.41	
	21610 9/20	Grants Pass	San Francisco	1		3.65			"	"		16.86	12.41	
OCTOBER 1921														
11845 A	23346 10/15	Portland	Corvallis	1		.65			W 64421	9/ 9/21		1.37	2.72	
	23347 "	Corvallis	Portland	1		.65			"	"		1.37	2.72	
NOVEMBER 1921														
12072	21619 11/ 2	San Francisco	Los Angeles	1		12.38			W 65135	9/ 9/21		17.84	4.58	.12
12073	24381 11/ 6	"	"	1		12.38			W 65244	9/10/21		17.84	4.58	.12
12074	24381 11/12	Los Angeles	San Francisco	1		12.38			W 65135	9/ 9/21		17.84	4.58	.12
DECEMBER 1921														
12222	25136 12/ 9	Portland	Reedsport & Ret	1 R T		12.38			W 64889	10/31/21		22.42	10.34	
JANUARY 1922														
12540	26046 1/ 6	Portland	Toledo	1		2.63			W 72946	11/21/21		7.40	2.77	
12541	26147 1/ 7	"	Reedsport & Ret	1 R T		5.14			"	"		11.90	5.76	
12542	26409 1/ 9	Newport	Portland	1		3.38			W 72946	"		8.15	2.77	
12543	26148 1/ 8	Portland	Newport & Ret	1 R T		4.65			"	"		8.25	3.60	
12544	26149 1/10	"	Marshfield & Ret	1 R T		10.28			"	"		20.62	10.34	
12545	26150 1/11	"	Independence	1		2.86			W 72946	11/21/21		5.63	2.77	
12546	26151 1/12	"	Marshfield	1		5.14			W 72946	11/21/21		10.28	5.14	
12547	26152 1/13	Marshfield	Portland	1		5.14			"	"		10.28	5.14	
12548	26153 1/14	Portland	Marshfield & Ret	1 R T		10.28			W 72946	11/21/21		20.62	10.34	
				38		170.96						409.53	238.57	2.94

WAR ENGINEERS—NON-MILITARY DUTY (Concluded)

Sheet No. 4

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF WAR ENGINEERS NON-MILITARY DUTY

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923 INCLUSIVE

RECAPITULATION

	NUMBER OF PASSENGERS	NET FARE AT WHICH SETTLEMENT WAS MADE TOTAL AMOUNT	PUBLISHED TARIFF FARE TOTAL AMOUNT	BALANCE DUE	
				LAND-GRANT	3 %
Sheet No. 1	13	$ 191.37	$ 279.98	$ 87.93	.68
" " 2	14	103.94	232.75	128.25	.96
" " 3	32	232.04	475.55	240.59	2.92
GRAND TOTAL	59	$ 527.35	$ 988.28	$ 456.77	4.36

DECEASED SOLDIERS, SAILORS, MARINES AND ESCORTS

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF BODIES OF DECEASED SOLDIERS, SAILORS, MARINES AND ESCORTS — Sheet #1

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1923 INCLUSIVE

(Covers items originally billed at tariff charges paid by Disbursing Officer and subsequently reduced by Gen. Acctg. Office by deduction from other bills. Settlement protested by carrier.)

Number and Date Of Original Bill	Department Transportation Req. Number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare At Which Settlement Was Made: Per Capita	Net Fare At Which Settlement Was Made: Total Amount	Deduction Made From Bill: Number	Deduction Made From Bill: Date	Settlement Number and Date (Settlement Protested): Number	Settlement Number and Date (Settlement Protested): Date	Published Tariff Fare: Per Capita	Published Tariff Fare: Total Amount	Balance Due: Land Grant	Balance Due: 5 or 3%
November 1920	WAR													
P 5600	WQ 3031043 11/ 2	Los Angeles	San Francisco	1		12.12	P 9910	6/21	W 62797	12/ 5/21		17.04	4.26	.64
	3031224 11/ 5	Oakland	King City	1		5.11	"		"	"		5.70	.59	
	3031238 11/ 4	"	Los Angeles	1		12.07	"		"	"		16.98	4.29	.62
	3044353 "	Roseburg	Portland	1		.03	"		"	"		9.16	9.13	
	3044356 11/ 3	Salem	"	1		.03	"		"	"		1.91	1.88	
December 1920														
6394	3031473 11/19	Paso Robles	San Francisco	1		6.82	11087	8/21	W 63557	1/24/22		7.38	.56	
January 1921														
6914	3297193 1/ 6	Riverside	Abilene, Tex.	1		46.93	11087		W 63557	"		52.74	4.51	1.30
.096	3045117 "	Ashland	Portland	1		.03	"		"	"		12.32	12.29	
7223	3045114 1/15	Portland	Albany	1		.03	"		"	"		2.90	2.87	
	3045115 1/16	Albany	Portland	1		.03	"		"	"		2.90	2.87	
	3045116 1/15	Portland	Ashland	1		.03	"		"	"		12.32	12.29	
	3045126 "	"	Salem	1		.03	"		"	"		1.91	1.88	
	3045127 1/16	Salem	Portland	1		.03	"		"	"		1.91	1.88	
February 1921														
7987	2817033 2/15	San Francisco	Cedar Rapids, Ia	1		52.32	11087		W 63557	"		73.36	19.42	1.62
	2817062 2/19	"	Louisville, Ky	1		61.29	"		"	"		83.93	20.75	1.89
	2817063 2/23	"	Comanche, N Y.	1		84.08	"		"	"		108.65	21.97	2.60
7948	3082692 2/21	Hayward	San Antonio	1		57.39	"		"	"		66.60	9.21	
June 1921														
P 9910	2548209 6/15	San Francisco	Shreveport, La.	1		54.90	9910	6/21	W 62797	12/ 5/21		73.46	16.86	1.70
				18		393.07						549.19	145.53	10.59

Settlement not protested.
Original bill reduced by General Accounting Office.

DECEASED SOLDIERS, SAILORS, MARINES AND ESCORTS (Concluded)

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF BODIES OF DECEASED SOLDIERS,SAILORS,MARINES AND ESCORTS — Sheet 6K

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1921 INCLUSIVE

(Covers items originally billed at net military fares with protest shown on face of bill.)

Number and Date of Original Bill	Department Transportation Req.Number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare at Which Settlement Was Made Per Capita	Net Fare at Which Settlement Was Made Total Amount	Deduction Made From Bill Number	Deduction Made From Bill Date	Settlement Number and Date Number	Settlement Number and Date Date	Published Tariff Fare Per Capita	Published Tariff Fare Total Amount	Balance Due Land Grant	Balance Due SP
	Mil													
January 1921														
7394	Mil 2572281 1/28/20 2572282	San Francisco	Delaware City,Del.	1		70.21			FD 230944	4/ 5/21		91.22	18.51	2.50
		"	"	1 Corpse		70.21			"	"		91.22	18.51	2.50
TOTAL				2		140.42						182.44	37.02	5.00
					RECAPITULATION									
		Sheet 1		18		393.07						549.37	145.53	10.77
		2		2		140.42						182.44	37.02	5.00
		GRAND TOTAL		20		533.49						731.81	182.55	15.77

COST CHARGED TO SOLDIERS

[illegible] FOR THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF SOLDIERS FOR WHICH COST IS CHARGED TO SOLDIERS,

[illegible] PERIOD FROM JULY 1, 1920 TO AUGUST 31, 1921 INCLUSIVE.

Amounts items originally billed at tariff charges, paid by Disbursing Officer and subsequently refunded by Con.Acctg. Office by deduction from other bills. Settlement protested by carrier.

[illegible]	Transportation Requisition Number and Date of Service	Journey		Number of Passengers	Net Fare At Which Settlement Was Made		Deduction Made From Bill		Settlement Number and Date (Settlement Protested)		Published Tariff Fare		Balance Due	
		From	To		Per Capita	Total Amount	Number	Date	Number	Date	Per Capita	Total Amount	Total Amount	%
[illegible]														
[illegible]	W 211845 6/22	San Francisco	Columbus, N.M.	1		43.92	P 11087	8/21	W 63537	1/24/22		53.94	10.02	
[illegible]	211846 6/24	"	El Paso	1		38.78	"	"	"	"		55.26	16.48	
[illegible]														
[illegible]	1137778 3/21	"	Omaha	1		45.96	11087		W 63537	1/24/22		63.48	17.52	
[illegible]	1140217 3/24	"	Camp Grant, Ill.	1		57.39	"		"	"		76.92	19.53	
[illegible]														
[illegible]	1140861 4/19	"	Ft Logan, Colo.	1		42.69	11087		W 63537	1/24/22		57.70	15.01	
[illegible]														
[illegible]	1140115 5/21	"	Jefferson Bks.,Mo.	1		53.33	6820	1/21	W 63040	12/ 9/21		74.11	20.78	
				6		281.07						383.73	99.44	

OFFICERS AND ENLISTED MEN PROCEEDING HOME ON RETIREMENT

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF OFFICERS AND ENLISTED MEN PROCEEDING HOME ON RETIREMENT

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1921 INCLUSIVE

(Seven items originally billed at tariff charges, paid by Disbursing Officer and subsequently refused by Gen.Acctg. Office by deduction from other bills. Settlement protested by carrier.)

Number and Date of Original Bill	Department Transportation Req.Number and Date of Service	Journey From	Journey To	Number of Passengers	Net Fare At Which Settlement Was Made Per Capita	Net Fare At Which Settlement Was Made Total Amount	Deduction Made From Bill Number	Deduction Made From Bill Date	Settlement Number and Date (Settlement Protested) Number	Settlement Number and Date (Settlement Protested) Date	Published Tariff Fare Per Capita	Published Tariff Fare Total Amount	Balance Due Land Grant	Balance Due 5 or 3%
November 1920	318													
P 6626	WS 3032236 12/27	San Francisco	Los Angeles	1		12.12	P 11087	8/21	W 63557	1/24/22		17.06	4.38	.44
6982	3032221 "	"	New York	1		84.92	11097	"	W 63564)	1/20/22		111.65	22.83	2.28
	3032250 12/31	"	Paola, Kan.	1		43.97	11097		63565)			65.13	19.66	1.98
February 1921														
7062	3032897 2/14	"	Birmingham, Ala.	1		65.06	11087	8/21	W 63557	1/24/22		88.80	21.73	2.01
7063	3423132 2/ 7	Nogales	Hampton, Va.	1		76.12	11087		"	"		89.15	8.61	2.42
7064	3477975 2/28	San Francisco	Seattle	1		7.40	6820	1/21	W 63040	12/ 9/21		33.42	25.79	.23
June 1921														
7117	2722906 6/ 6	Pasadena	Camp Lewis	1		15.08	17275 etc	9/22	W 69930	2/20/23		44.01	28.67	.46
7126	3057365 6/25	Los Angeles	San Francisco	1		12.38	"	"	"	"		17.06	4.38	.38
				8		321.05		9				468.44	137.25	10.14

STRANDED ENLISTED MEN

BALANCE DUE THE SOUTHERN PACIFIC COMPANY FROM THE UNITED STATES FOR TRANSPORTATION OF STRANDED ENLISTED MEN

PERIOD NOVEMBER 1, 1920 TO AUGUST 31, 1921 INCLUSIVE

(Covers items originally billed at tariff charges, and reduced to net fares by Disbursing Officer)

Number and date of Original Bill	Department Transportation Req. Number and Date of Service	Journey		Number of Passengers	Net Fare At Which Settlement Was Made		Deduction Made From Bill		Settlement Number and Date		Published Tariff Fare		Balance Due	
		From	To		Per Capita	Total Amount	Number	Date	Number	Date	Per Capita	Total Amount	Land Grant	%
December 1920	NAVY													
P 6408	N 1611898 12/ 9	Portland	San Francisco	1		3.75	P 6408	12/20	D.O. 301177	3/17/21		26.96	23.21	
6480	1613094 12/22	"	"	1		3.75	6480	12/20	N 250613	5/17/21		26.96	23.21	
				2		7.50						53.92	46.42	

RECAPITULATION BY CLASSES

	NUMBER OF PASSENGERS	NET FARE AT WHICH SETTLEMENT WAS MADE TOTAL AMOUNT	PUBLISHED TARIFF FARE TOTAL AMOUNT	BALANCE DUE	
				LAND GRANT	$
Guards and Prisoners	1,245	$ 17,500.61	$ 33,118.80	$ 15,368.48	249.51
Reserve Officers	179	1,973.68	3,345.38	1,345.59	26.11
Navy Nurses	37	1,179.49	1,734.70	550.77	6.44
War Engineers - Non-Military Duty	59	527.15	988.28	456.77	4.36
Discharged Soldiers, Sailors, Marines and Escorts	20	533.49	731.61	182.55	15.57
Cost Charged to Soldiers	6	284.07	383.73	99.66	-
Officers and Enlisted Men Proceeding Home On Retirement	8	321.05	468.44	137.85	10.14
Stranded Enlisted Men	2	7.50	53.92	46.42	
GRAND TOTAL	1,556	$ 22,325.04	$ 40,824.86	$ 18,187.69	312.13

[fol. 15] III. General Traverse—Filed January 7, 1924

No demurrer, plea, answer, counterclaim, setoff, claim of damages, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by Rule 34.

IV. Argument and Submission of Case

On May 8, 1929 this case was argued and submitted on merits by Mr. Wm. R. Harr for plaintiff, and Mr. L. R. Mehlinger for defendant.

V. Proceedings After Submission

On June 10, 1929 the Court filed findings of fact and conclusion of law, judgment for plaintiff in the sum of $4,273.35, with Opinion by Chief Justice Booth.

On August 9, 1929 Defendant filed a motion for a new trial. On November 4, 1929 defendant's motion for a new trial was allowed.

[fol. 16] VII. Order of Court Remanding Case, etc.

Order

It is ordered this 4th day of November, 1929, that the defendant's motion for a new trial be and the same is allowed.

The findings of fact, judgment and opinion heretofore filed are vacated, set aside and withdrawn, and the case is remanded to the General Docket with leave to both parties to take testimony in accord with the Memorandum below.

Memorandum

The motion for a new trial in this case is for the purpose of introducing evidence as to the charging to prisoners (soldiers) the cost of their transportation, the court having held that where their transportation requests were en-

[fol. 17] dorsed "Commanding officer notified of amount to

be charged against the soldier," the burden was upon the Government, if it sought land-grant deductions, to prove that the cost of transportation was not so charged.

Necessarily such burden must rest upon the Government, assuming, as the court assumes, that charging of the cost precludes land-grant deductions because, if for no other reason, the information is with the Government and not with the plaintiff. The cases cited by the Government in its brief—Illinois Central R. R. v. United States, 62 C. Cls., 61, and Louisville & Nashville R. R. v. United States, 62 C. Cls., 154, merely hold that the transportation of military guards and prisoners was subject to land-grant deduction. In those cases the endorsement in question did not appear.

The evidence should show what amounts, if any, were [fol. 18] charged to the prisoner on account of transportation of the guard. For the cost of the prisoner's transportation includes the fare paid for his guard.

By the Court.

F. W. B., Ch. J.

[fol. 19] VII. Reargument and Submission of Case

On March 11, 1931 this case was reargued and submitted on merits (New Trial) by Mr. Charles H. Bates for plaintiff and Mr. Louis R. Mehlinger for defendant.

[fol. 20] VIII. Special Findings of Fact, Conclusion of Law, and Opinion of the Court by Chief Justice Booth.—Entered June 1, 1931

This case having been heard by the Court of Claims, the court, upon an agreed statement of facts signed on behalf of plaintiff by Messrs. Harr & Bates and on behalf of defendant by Assistant Attorney General Charles B. Rugg, and the evidence, makes the following

Special Findings of Fact

I

Plaintiff is a corporation duly organized under the laws of the State of Kentucky, and as such corporation now is

and was during all the times hereinafter mentioned, engaged as a common carrier in the transportation of passengers and property in and through various States of the United States. Portions of the lines of railroad operated by plaintiff, over which the service now under consideration was rendered, were constructed with the aid of grants of land by the United States.

II

Under the acts of Congress granting lands in aid of railroads and acts of Congress regulating the expenditure of appropriations by the United States for Army transportation over such land-grant railroads, so far as same may be applicable, said land-grant railroads are required to transport troops and property of the United States at rates not exceeding fifty per centum of the rates paid by private parties for the same kind of service.

III

At the times when the transportation hereinafter mentioned was performed, the railroad companies of the United States generally, including plaintiff, had severally agreed with the Quartermaster General of the United States Army (subject to certain exceptions not material here) to accept for the transportation of persons for whom the United States Government is lawfully entitled to reduced fares or charges over land-grant roads, the lowest [fol. 21] net fare or charge and the lowest net excess baggage rate lawfully available, as derived through deductions account of land-grant distance, from the lawful fare or charge from point of origin to destination in effect via a route that is recognized as a usually traveled route for military traffic at time of movement. Said agreements and list of carriers participating are set forth in Appendix No. 9 to Manual for the U. S. Quartermaster Corps, 1916, Vol. II, pp. 223, 229-230, which was superseded by Quartermaster General Circular No. 15, May 18, 1922. Said agreements are made a part hereof by reference.

IV

At the time of the transportation referred to herein there were also in force certain agreements between certain rail-

road companies, including plaintiff, and the Quartermaster General of the Army, known as joint military arrangements, by which the carriers agreed to certain deductions, in addition to land grant, for the transportation of officers and enlisted men of the United States Army, Navy, and Marine Corps and other persons connected therewith, where the cost of the transportation was paid by the United States. These agreements were the joint military arrangement, dated December 28, 1916, effective January 1, 1917, Sections III and IV, which provided for a 5 per cent deduction, and joint military arrangement No. 1, dated December 28, 1920, effective January 1, 1921, secs. 3 and 4, which provided for a 3 per cent deduction, in addition to the usual land-grant deduction.

V

During the years 1920-1923, both inclusive, plaintiff, upon transportation requests issued by the War Department, the Navy Department, and the Marine Corps of the United States, transported the various classes of persons hereinafter more particularly described.

In settling plaintiff's accounts for said transportation, or in adjusting accounts of plaintiff previously settled, the defendant, through its disbursing or accounting officers, made or required plaintiff to make certain deductions from the amounts due therefor at the regular commercial fares upon the ground that the persons transported were troops of the United States within the meaning of the land-grant laws and land-grant equalization agreements referred to in subdivisions II and III thereof, plaintiff accepting payment on such reduced basis under protest. The total amount of said land-grant deductions aggregated $17,986.76.

In certain of said instances further deductions were also made or required to be made by the defendant through its disbursing or accounting officers, on the ground that such further deductions were required by the provisions of the joint military arrangements referred to in subdivision IV thereof. These additional deductions aggregated $296.85.

The persons and classes of persons as to whom the aforesaid land grant and additional percentage deductions were made or required to be made are hereinafter more particularly described, to wit:

[fol. 22] VI

Military Prisoners and Guards.—The persons referred to in Exhibit A to the petition (which is made a part of this finding by reference) as prisoners and guards were either (1) general military prisoners and their guards, i. e., enlisted men of the Army, Navy, or Marine Corps, who had been convicted of some offense by general court-martial and were en route, under the guard of other enlisted men of the Army, Navy, or Marine Corps, to military prisons to serve their sentences, said prisoners not having been discharged from the military service; or (2) enlisted men of the Army, Navy, or Marine Corps, who, for some reason other than conviction and sentence by general court-martial, were traveling under like military guard to the destinations named in the departmental requests covering their transportation.

Of the persons referred to in said Exhibit A196 were prisoners on account of which $1,794.46 was deducted for land grant and $50.34 under the Joint Military Arrangements; 620 were guards on account of which $6,125.33 was deducted for land grant and $115.32 under the Joint Military Arrangements; 393 were prisoners and guards on account of which $7,023.62 was deducted for land grant and $72.18 under the Joint Military Arrangements.

A number of the departmental requests covering the transportation of the aforesaid prisoners and guards were endorsed: "Commanding officer notified of the amount to be charged against soldier." The requests so endorsed covered 464 persons and involved land-grant deductions aggregating $3,584.74 and deductions under the Joint Military Arrangements of $83.34.

Of the transportation requests endorsed "Commanding officer notified of the amount to be charged against soldier," a number covered the transportation of general military prisoners, as above defined, and their guards, the cost of whose transportation was payable from Army appropriations and was not charged back to said prisoners. These transportation requests covered 41 persons and involved land-grant deductions of $288.89 and deductions under the Joint Military Arrangements aggregating $2.86.

The remainder of the transportation requests, covering 422 persons, endorsed "Commanding officer notified of the amount to be charged against soldier," covered enlisted

men of the Army, Navy, and Marine Corps who had not been convicted of any military offense but for some reason were traveling under guard to the places named in the departmental requests covering their transportation. The commercial fares for the transportation of these soldiers and their guards were actually charged by the Government against said soldiers. From these charges $3,289.05 was deducted on account of land grant, and $80.48 was deducted on account of the 5 or 3 per cent allowance authorized by the Joint Military Arrangements. The commercial fares charged against these soldiers for the transportation of themselves and their guards were collected from the soldiers by the Government to the following extent:

(a) In the case of 100 of said soldiers and 133 guards, involving land-grant deductions of $1,767.32 and deduc- [fol. 23] tions under the Joint Military Arrangements of $43.70, the commercial fares for such transportation so charged against the soldiers were collected in full.

(b) In the case of 53 of said soldiers and 101 guards, involving land-grant deductions of $1,126.33 and deductions under the Joint Military Arrangements of $29.59, the commercial fares for their transportation, although charged to said soldiers, were never collected.

(c) In the case of 18 of said soldiers and 17 guards, involving land-grant deductions of $395.40 and deductions under the Joint Military Arrangements of $7.19, the commercial fares for their transportation, amounting to $952.92, although charged to said soldiers, were collected only to the extent of $645.43.

In the case of transportation request No. 3317436, plaintiff's bill 7930 covering the transportation of one person and involving land-grant deductions of $6.80, the commercial charge for the transportation of said person was erroneously charged to the soldier, but was subsequently canceled on the ground that the charge was erroneously made.

There were 23 enlisted men en route to proper stations, joining proper stations or returning to proper stations, the transportation requests for whom were endorsed: "Commanding officer notified of the amount to be charged against soldier," which involved land-grant deductions aggregating $271.64 and deductions under the Joint Military Arrangements of 41 cents.

There were 6 enlisted men en route to proper stations, joining proper stations or returning to proper stations, the transportation requests for whom bore no such endorsement as to cost charge, which involved land-grant deductions aggregating $108.27 and deductions under the Joint Military Arrangements of $3.41.

There were 8 Navy enlisted men who were shown on the transportation requests as stragglers which involved land-grant deductions of $45.36 and deductions under the Joint Military Arrangements of $4.88.

The plaintiff and other carriers have taken the position that wherever the cost of the transportation of a soldier was charged by the Government to the soldier, such transportation should be regarded as nonmilitary and that for such transportation the Government was not entitled to land-grant deductions from the commercial rate for the same. The accounting officers of the defendant have insisted that said deductions were proper because the persons transported were regularly enlisted in the military service of the United States and the charging against them of the cost of their transportation was for disciplinary purposes only.

VII

2. Members of the Officers' Reserve Corps.—In Exhibit B to the second amended petition under this heading the persons transported were members of the Officers' Reserve Corps established by section 37 of the national defense act of June 3, 1916, 39 Stat. 189, as amended by section 32 of the act of June 4, 1920, 41 Stat. 775. The amounts required to be deducted from accounts of the plaintiff for the transportation of such members of the Officers' Reserve Corps [fol. 24] on account of land grant aggregated $1,176.36, and the additional amount also required to be deducted on account of the aforesaid joint military arrangements was $16.03.

Said members of the Officers' Reserve Corps at the time of said transportation were traveling to and from encampments under orders of the Secretary of War.

The regulations of the War Department governing the Officers' Reserve Corps are made a part hereof by reference.

VIII

3. Navy Nurses.—The Nurse Corps of the Navy was established by the act of May 13, 1908, 35 Stat. 146, which authorized the appointment of nurses by the Surgeon General with the approval of the Secretary of the Navy. Said act provided that said nurses shall "receive the same pay, allowances, emoluments, and privileges as are now or may hereafter be provided by or in pursuance of law for the Nurse Corps (female) of the Army.".

The regulations of the Navy Department governing the Nurse Corps are made a part hereof by reference.

Of the persons listed under the head of Navy nurses, those covered by the transportation requests Nos. 1509497, 1582549, 1472472, 1790490, 1306083, 141984, and 1197260 had been ordered home for discharge, which took effect after they arrived home. The land grant and percentage deductions on account of these items were $132.70, and $1.59, respectively. Those covered by transportation requests Nos. 1005764, 845805, 845812, 1879604, 1879606, and 995915 were reporting for service under initial orders, the land-grant deductions as to which were $23.33, there being no percentage deductions. Those covered by transportation requests Nos. N 805258, N 1472256, 1727629, 1582544, 1567697, 1755960, 1755958, 1472476, 1686246, 1790795, 845884, 845886, 845888, 1879634, 1879638, 988516, 995959, 995961, 1686027, 1647676, and 988361 were Navy nurses who were being transferred to new stations for duty, the land grant and percentage deductions as to which were $345.99 and $2.62, respectively. The person covered by transportation request No. 1682567 had been ordered to accompany another nurse home, the land-grant deduction as to which being $17.05, there being no percentage deduction.

IX

4. Engineer Officers of the War Department on Duty in Connection with River and Harbor Works and the California Débris Commission.—The persons listed in Exhibit B to the second amended petition under this heading were all officers of the Engineer Corps of the United States Army, the cost of whose transportation was paid from appropriations of the War Department covering river and harbor works and the California Débris Commission, and

they were traveling for the purposes connected with river and harbor improvement work or to attend meetings of said commission. The land grant and percentage deductions on these items aggregate $456.77 and $4.36, respectively.

[fol. 25]

X

5. Escorts Accompanying the Remains of Deceased Soldiers.—The transportation requests enumerated in Exhibit B to the second amended petition under this heading were for enlisted men of the Army detailed to accompany the remains of deceased soldiers. Full commercial rates were paid by the Government for the transportation of the remains which they were escorting. The land grant and percentage deductions on account of the transportation of said enlisted escorts aggregate $182.55 and $15.57, respectively.

XI

6. Transportation of Enlisted Men Changing Station or Returning to Station.—The transportation requests enumerated under this heading in Exhibit B to the second amended petition were endorsed "changing station" or "returning to station." On the face of each request was stamped the following endorsement: "Commanding officer notified of amount to be charged against soldier." It has not been ascertained whether any such charges were made or collected. The land-grant deductions on these items aggregate $99.66.

XII

7. Officers and Enlisted Men.—Transportation requests 3032236, 3032221 and 3032897 were for officers of the Army proceeding to their homes after date of their retirement. The land grant and percentage deductions as to these items amounted to $48.24 and $5.15, respectively. Transportation request No. 3423132 was for the transportation of an enlisted man subsequent to his retirement, the land grant and percentage deductions as to which were $8.61 and $2.42, respectively. Transportation requests Nos. 3477975 and 3057365 were for the transportation of retired officers of the Army on active duty, the land grant and percentage deductions as to which were $30.27 and $0.61, respectively.

Transportation request No. 3032350 was for the transportation of an officer of the Medical Reserve Corps of the Army prior to his relief from active duty, the land grant and percentage deductions as to which were $19.66 and $1.50, respectively. Transportation request No. 2722906 covered the transportation of a retired officer of the Army recalled to active duty, the land grant and percentage deductions as to which were $30.47 and $0.46, respectively.

XIII

8. Stranded Enlisted Men.—Transportation requests Nos. N 1631898 and N 1632074 were for stranded enlisted men of the Navy traveling on Navy Department transportation requests back to their proper station. The land-grant deductions on these items aggregated $46.42.

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to judgment in the sum of $493.71.

[fol. 26] It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of four hundred ninety-three dollars and seventy-one cents ($493.71).

Opinion

Booth, Chief Justice, delivered the opinion of the court:

This case was first decided by the court on June 10, 1929. The plaintiff recovered a judgment for $4,273.35. On August 9, 1929, defendant filed a motion for a new trial, alleging not only errors of law but requesting a remand of the case to the general docket, if the court should adhere to its opinion, in order to permit the defendant to adduce certain testimony pertinent and material to the issues decided by the court.

On November 4, 1929, the court entered and announced the following order and memorandum:

"It is ordered this 4th day of November, 1929, that the defendant's motion for a new trial be and the same is allowed.

"The findings of fact, judgment, and opinion heretofore filed are vacated, set aside, and withdrawn, and the case is remanded to the General Docket with leave to both parties to take testimony in accord with the memorandum below.

"Memorandum

"The motion for a new trial in this case is for the purpose of introducing evidence as to the charging to prisoners (soldiers) the cost of their transportation, the court having held that where their transportation requests were endorsed 'Commanding officer notified of amount to be charged against the soldier,' the burden was upon the Government, if it sought land-grant deductions, to prove that the cost of transportation was not so charged.

"Necessarily such burden must rest upon the Government, assuming, as the court assumes, that charging of the cost precludes land-grant deductions because, if for no other reason, the information is with the Government and not with the plaintiff. The cases cited by the Government in its brief—Illinois Central R. R. v. United States, 62 C. Cls. 61, and Louisville & Nashville R. R. v. United States, 62 C. Cls. 154—merely hold that the transportation of military guards and prisoners was subject to land-grant deduction. In those cases the endorsement in question did not appear.

"The evidence should show what amounts, if any, were charged to the prisoner on account of transportation of the guard. For the cost of the prisoner's transportation includes the fare paid for his guard."

Therafter testimony was taken and the parties to the case now stipulate that the essential facts are embodied in Finding VI. The original findings, with this exception, are agreed to as correct. The case was then again argued orally before the court and submitted on March 11, 1931.

In the opinion of this court, announced June 10, 1929, the court said:

"This case in practically all of its aspects presents contentions similar to those advanced in the cases of the Illinois Central Railroad Co. v. United States, 62 C. Cls. 61, [fol. 27] and Louisville & Nashville Railroad Co. v. United States, Id. 154. An application for a writ of certiorari was

denied by the Supreme Court in the Illinois Central case, October 18, 1926 (273 U. S. 710). The court is, therefore, of the opinion that as to members of the Officers' Reserve Corps, military prisoners and guards, and Navy nurses the issue as to the right of the Government to land-grant deductions on account of transportation furnished for their necessary travel has been determined. There is nothing in the argument now advanced as to error in previous decisions which we think warrants reconsideration of the issue as contended for.

"The first of the new items in suit concerns engineer officers of the War Department traveling under detail for purposes connected with river and harbor improvement work or attending meetings of the California Débris Commission. The land grant and percentage deductions on these two items, as stated in the petition, total $456.77 and $4.36, respectively. The act of June 13, 1902 (32 Stat., chap. 1079, pp. 372-373), makes the Board of Engineers a permanent body. Section 3 of the act is as follows:

" 'That there shall be organized in the Office of the Chief of Engineers, United States Army, by detail from time to time from the Corps of Engineers, a board of five engineer officers, whose duties shall be fixed by the Chief of Engineers, and to whom shall be referred for consideration and recommendation, in addition to any other duties assigned, so far as in the opinion of the Chief of Engineers may be necessary, all reports upon examinations and surveys provided for by Congress, and all projects or changes in projects for works of river and harbor improvement heretofore or hereafter provided for. * * *

" 'The Board shall have authority, with the approval of the Chief of Engineers, to rent quarters, if necessary, for the proper transaction of its business and to employ such civil employees as may, in the opinion of the Chief of Engineers, be required for properly transacting the business assigned to it, and the necessary expenses of the board shall be paid from allotments made by the Chief of Engineers from any appropriations made by Congress for the work or works to which the duties of the board pertain.'

"The California Débris Commission, erected by statute into a permanent governmental agency, was established by the act of March 1, 1893 (27 Stat. 507). Sections 1 and 4 of the act provide:

" 'That a commission is hereby created, to be known as the California Débris Commission, consisting of three members. The President of the United States shall, by and with the advice and consent of the Senate, appoint the commission from officers of the Corps of Engineers, United States Army. Vacancies occurring therein shall be filled in like manner. It shall have the authority, and exercise the powers hereinafter set forth, under the supervision of the Chief of Engineers and direction of the Secretary of War.'

* * * * * * *

" 'That it shall be the duty of said commission to mature and adopt such plan or plans, from examinations and surveys already made and from such additional examinations and surveys as it may deem necessary, as will improve the navigability of all the rivers comprising said sytsems, deepen their channels, and protect their banks. Such plan [fol. 28] or plans shall be matured with a view of making the same effective as against the encroachment of and damage from débris resulting from mining operations, natural erosions, or other causes, with a view of restoring, as near as practicable and the necessities of commerce and navigation demand, the navigability of said rivers to the condition existing in eighteen hundred and sixty, and permitting mining by the hydraulic process, as the term is understood in said State, to be carried on, provided the same can be accomplished w-thout injury to the navigability of said rivers or the lands adjacent thereto.'

"The plaintiff expresses positive disapproval of this court's decision in the Illinois Central and Louisville & Nashville cases (supra), and presses the same point in argument with respect to this item of its suit, i. e., that under the decision of the Supreme Court in the case of the United States v. Union Pacific Railroad Co., 249 U. S. 354, 'the word "troops" had (and it has ever since had) an established meaning—namely, "soldiers collectively—a body of soldiers."' If plaintiff's analysis and conclusions as to the conclusive effect of the decision of the Supreme Court in the Union Pacific case (supra) are correct, obviously transportation furnished an officer traveling in peace time, under detail so to do, irrespective of the purpose of his journey, affords the Government no right to the

reduced fare stipulated in the land grant acts, and this court was in error in holding otherwise in the cases challenged. In the statement just made we assume that a wholly different situation prevails in war time. In the Union Pacific case the class of persons for whom the reduced land-grant rates were claimed was distinctly civilian, and in no sense 'military,' i. e., as the court said: 'Their status is that of the civilian'; and it was in nowise altered because Congress saw fit to make 'special provisions for their transportation.' In the present instance we have officers of the Army in active service, detailed by proper authority to perform a service which we think must embrace an element of military concern. The transportation of troops in war time is of vital concern, and the very fact that Congress creates permanent commissions composed exclusively of engineer officers of the Army indicates a conception of the necessity of entrusting the supervision of the improvement of rivers and harbors to the military department of the Government. While it may be said that the primary purpose of the improvement of rivers and harbors has to do with interstate and foreign commerce, this fact does not exclude the additional vital interest of the Government in times of war, and unless it may be said that the officer's travel must be confined exclusively to military duty, the plaintiff's insistence seems to us untenable. The Panama Canal is not alone a commercial artery of inestimable value; its military significance is recognzied.

"This court is committed to the rule that where an officer of the Army is detailed to a specific service, involving Government business in which the Army is concerned, that the land-grant rates of transportation over land-grant railroads obtain.

"In the Illinois Central case, 62 C. Cls. 61, 65, 66, this court said:

" 'When ordered to perform duty he is doing so, not for his own purposes, but for the purposes of the Government, and when traveling to the place to which he has been [fol. 29] ordered he is being transported for the convenience of the Government. The fact that these officers were individual officers of the Reserve Corps, traveling to and from encampments under orders of the Secretary of War, does not alter their status. They are a part of the Army of the United States and must be classed as

"troops of the United States" within the meaning of the land-grant acts. If they are not troops of the United States, what are they? They are not militia officers, they are not National Guard officers, they are not persons attached to the Military Establishment, but having no status as soldiers. Such being the case the conclusion is inevitable that they are a part of the Army of the United States, and when on active duty and being transported for the purposes and convenience of the Government they must be classified as troops of the United States.'

"Officers of the Army are moved to various military stations and posts, as often individually as collectively, and to restrict the significance of the word 'troops' to the extent contended for is contrary to our former holdings and convictions. The error we think the plaintiff falls into is the assertion that the improvement of rivers and harbors involves a duty upon the part of the officer of a strictly non-military character. The twofold purpose of such enterprises we think is apparent. The Attorney General, in 19 Ops. Atty. Gen'l 572-575, expressly held that officers of the Engineer Corps of the Army under the precise situation obtaining in this case must be transported at land-grant rates.

"What we have said applies to the next item in suit, i. e., enlisted men of the Army acting as military escorts accompanying the remains of deceased soldiers. The defendant concedes, and we think properly so, that three transportation requests involved in this item, a difference of $60.58, were not issued for the transportation of enlisted men of the Army. Two of the said requests were issued for civilian attendants, and one for the remains of the deceased soldier. The plaintiff is entitled to a judgment for $60.58.

"The status of retired officers and enlisted men was passed on in the Union Pacific case (supra). The plaintiff is entitled to recover under this item. The defendant concedes error in making the deductions. Judgment will be awarded under this item for $64.42.

"The Illinois Central and Louisville & Nashville cases (supra) determined the status of retired officers and enlisted men on active duty. The petition as to this item will be dismissed.

"The claim designated 'stranded enlisted men' is, in accord with the facts, conceded by the defendant to be the equivalent of a status of an enlisted man of the Navy traveling on furlough. Judgment for the amount claimed, $46.42, will be awarded. United States v. Union Pacific Railroad Co., 249 U. S. 354, 360."

To the views thus expressed we do now adhere. The single remaining question for decision is whether the Government is entitled to land-grant deductions when the cost of transportation is charged against and deducted from the pay of the party transported.

The plaintiff contends that whenever the cost of the transportation of a soldier was charged by the Government to the soldier it is the duty of the court to hold such transportation as of a nonmilitary character and the Government not entitled to land-grant deductions. The accounting officers of the Government, on the other hand, insist that where soldiers are transported, i. e., those in military [fol. 30] service of the United States, the charging against them of the cost of such transportation is imposed by way of penalty and is for disciplinary purposes with which the railroad has no concern. Attention is to be directed to the fact that Finding VI discloses that except as to two instances the large number of soldiers transported were of two classes. One class was composed of enlisted men of the Army, Navy, or Marine Corps who had been convicted of some offense by a court-martial and were en route under guard of enlisted men to the prisons where they were to be confined. The other class was composed of enlisted men of the Army, Navy, or Marine Corps en route under guard of enlisted men for some reason other than a conviction and sentence of a court-martial. In other words, all were prisoners. The transportation requests presented to the plaintiff bore upon their face in the instances found in Finding VI the following: "Commanding officer notified of the amount to be charged against soldier," and in the instances found in Finding VI the defendant admits that the transportation costs were charged against the soldier. In other instances found, the cost of transportation was charged against the soldier but not collected for some reason or other, and in one instance it was collected and later refunded.

When the case was first before the court we were of the opinion that land-grant deductions from commercial fares, where the cost of such transportation was charged and collected from the soldier, could not be sustained, and we awarded judgment accordingly. Our views were then predicated upon the fact that the defendant by making such an endorsement upon the transportation requests established the status of the soldier in so far as travel was involved, i. e., expressly characterized the travel as of a nonmilitary kind, and having given the railroad notice of such by the endorsement defendant, in the absence of proof to the contrary, was not entitled to the deductions made. In addition to this, the Interterritorial Military Arrangement, effective January 1, 1921, provided as follows: "On travel of soldiers on furlough or in other cases where the entire cost of transportation is not paid by the United States Government," land-grant deductions will not be made. A soldier or group of soldiers traveling at Government expense for a military purpose under proper orders does not require, and the railroad company may not exact, an endorsement upon the transportation requests similar to the one now at issue. The law, it is exact to say, fixes the soldier's status, but lawful military orders may temporarily alter his status in so far as the cost of transporting him is concerned, affecting both the rights of the railroad and the Government. As was said in United States v. Union Pacific Railroad Co., 249 U. S. 354, 360:

"'The furloughed soldier is, of course, a part of the Army or troops of the United States; but his transportation back to the proper station is not 'transportation of troops' within the meaning of the land-grant acts. The furloughed soldier travels for his own purposes. The Government merely advances to him the cost of transportation and subsistence while on furlough; and does this, only if the soldier lacks funds to bear the expense himself. The advance must be repaid."

The defendant argues and asserts that the recoupment of the cost of transporting the prisoners and guards is part [fol. 31] of the penalty imposed upon him for the violation of military laws or for disciplinary infractions. We have no evidence to that effect. The stipulation of facts does

not so recite. Reference is made thereto in the statement of the contentions of the parties. Such may or may not be the fact. Of course, in a strict sense it may not be said that a convicted prisoner of the Army en route to prison is traveling for his own purpose. He has no choice, and the Army authorities are but discharging a duty in relation to his transportation. Beyond doubt such a soldier is a soldier in the Army until by proper military procedure he is separated therefrom. The statutes fix the right to land-grant deductions, and if we are correct in our construction of them as between the railroad and the Government the latter is entitled to them when the transportation falls within the land-grant acts, irrespective of what may take place between the soldier and the Government. If the Government imposes upon the soldier an illegal deduction from his pay, the right to recover it is open to the soldier. The land-grant acts conferred mutual benefits, and if the transportation is furnished to troops of the United States the right to the deduction obtains. The exceptions which the courts have recognized, the cases in which commercial rates have been allowed, have uniformly turned upon whether the soldier or soldiers were part of the Army of the United States at the time the transportation was accomplished and at the time traveling under proper orders in pursuit of military affairs and duties. Finding VI shows that the soldiers transported were admittedly in the Army, Navy, or Marine Corps; that the guards in custody of them were enlisted men of the Army, Navy, or Marine Corps, traveling to discharge an imperative military duty, and hence under our former decisions troops of the United States. As this court said in the Chicago, Rock Island & Pacific Railway Company case, 58 C. Cls. 33, 36—

"Whether expense of travel performed by a guard and his prisoner is or is not charged against the prisoner as a part of the penalty inflicted upon him or otherwise cannot of itself affect the status of the guard or impair the rights of the Government as between it and the carrier."

In this case another factor impels our reversal of our former opinion. In many instances when the transportation requests bore the endorsement "Commanding officer notified of the amount to be charged against soldier," the cost of the transportation was so charged against him but

never collected. In other cases a portion of the cost was charged and collected, and in others no such charge at all was made. Therefore it seems to us that the endorsement, aside from its unreliability as an index of the status of a prisoner soldier, may have been no more than a notation for the benefit of accounting when the transportation request was finally returned to the Government. The plaintiff insists that to permit the Government to deduct under the facts of this case is to extend the benefits of the land-grant acts to the individual soldier and not the Government. This contention, we think, would lead us, as the defendant in its brief observes, into the investigation of a collateral issue, i. e., whether the Government was lawfully authorized to deduct and for what purposes the deduction was made. If the penalty imposed upon the prisoners transported included a sequestration of part of their pay, in view of the fact that the expense involved was of their [fol. 32] own wrongful instigation, the railroad would have no right to complain. The issue, we think, in the present case is somewhat restricted as between the plaintiff and defendant and pertains only to the relationship of the parties involved. The stipulated Finding VI fixes the status of the soldiers transported as between the plaintiff and defendant.

The transportation requests for the transportation of 23 enlisted men en route to proper stations or returning to proper stations were endorsed "Commanding officer notified of the amount to be charged against soldier." We think as to this transportation a different rule applies than the one applicable to the transportation of prisoners and their guards. In the Union Pacific case, 249 U. S. 354, the Supreme Court decided that a furloughed soldier traveling to his proper station after the expiration of his furlough was traveling for his own convenience, and if the Government advanced the cost of such transportation it must be repaid, and hence such transportation was not of the character for which land-grant deductions might be made. Finding VI, as to these 23 enlisted men, does not specifically disclose the purpose of the travel, but the transportation requests with the heretofore noted endorsement thereon warrant the inference, we think, in the absence of positive proof to the contrary, that the soldiers involved were to pay therefor; otherwise the endorsement was mean-

ingless. The railroad possesses no means of knowing the character of travel other than what may be obtained from the requests, and we cannot escape the conclusion that as to these soldiers the cost of their transportation was to be charged against them because it was not travel for which land-grant deductions could be taken.

What we have said applies to the eight Navy men shown on the request as "stragglers." While the finding does not positively state that the transportation request bore the endorsement relied upon, the plaintiff in its brief states that it did, and the defendant does not contradict it. We think it is a legitimate inference from the finding as a whole that the endorsement did appear. The parties were addressing themselves to this single issue and where the endorsement did not so appear it is so found. As to the six enlisted men where no such endorsement appeared, land-grant deductions were available to the defendant. As previously observed, the endorsement must have served as to this particular class of soldiers a distinct purpose, and if it appears in some instances and is omitted in others this but emphasizes the fact that the defendant's officers found the travel of a character for which the soldier for his own purposes must pay. As to this class of persons the issue is not resolvable upon the single fact of the status of the man as a soldier. A furloughed soldier is none the less a soldier in the Army. The Supreme Court places the right of the railroad to commercial rates upon the ground that he is traveling for his own purposes, a journey individual to him, and disconnected with travel designated "transportation of troops." The plaintiff is, we think, entitled to a judgment for $272.05 in the case of the 23 enlisted men and $50.24 for the "stragglers," making, as held in this opinion, a total judgment of $493.71.

Whaley, Judge; Williams, Judge; Littleton, Judge; and Green, Judge, concur.

[fol. 33] IX. JUDGMENT

At a Court of Claims held in the City of Washington on the first day of June 1931, judgment was ordered to be entered as follows:

The Court Upon Special findings of fact, which are made a part of the judgment herein, the Court decides, as a con-

clusion of law, that the plaintiff is entitled to recover.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of Four hundred ninety-three dollars and seventy-one cents ($493.71).

Opinion of the Court by Chief Justice Booth.

[fol. 34] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 36,153. Court of Claims. Term No. 339. Southern Pacific Company, petitioner, vs. The United States. Petition for writ of certiorari and exhibit thereto. Filed August 31, 1931. File No. 36,153.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 30, 1931

The petition herein for a writ of certiorari to the Court of Claims is granted, limited to the question raised with respect to Engineer Officers of the War Department in performing duties in time of peace in connection with rivers and harbors improvements and the meetings of the California Debris Commission.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

(File No. 36153)

NOV 2 19
CHARLES ELMORE C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 339.

SOUTHERN PACIFIC COMPANY, *Petitioner,*

vs.

THE UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

BRIEF FOR SOUTHERN PACIFIC COMPANY IN SUPPORT OF THE PETITION.

CHARLES H. BATES,
Counsel for Petitioner,
Mills Building,
Washington, D. C.

November 2, 1931.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 339.

SOUTHERN PACIFIC COMPANY, *Petitioner,*

vs.

THE UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

BRIEF FOR SOUTHERN PACIFIC COMPANY IN SUPPORT OF THE PETITION.

REPORT OF THE OPINION BELOW.

The Opinion of the Court of Claims in this case (R. 72) has not yet been reported, but will probably later appear in 72 C. Cls. . . . . .

JURISDICTION.

The judgment of the Court of Claims was rendered on June 1, 1931. (R. 82.) The petition for writ of certiorari was filed August 31, 1931. (R. 83.) The petitioner invokes the jurisdiction of this Court under Section 3(b) of the Act of February 13, 1925 (Ch. 229, 43 Stat. 936, 939).

QUESTION PRESENTED.

The only question of law involved in this case, both below and here, is whether any or all of the several classes of persons, mentioned in the following statement of the case, are "*troops* of the United States" within a fair, reasonable and just meaning of the reservations and restrictions concerning the transportation of "troops and property of the United States" contained in the several Acts of Congress making grants of lands to certain railroads, and as enforced in the Army Appropriation Acts, and other acts, under which the transportation in question was authorized.

STATEMENT OF CASE.

This case involves the right of the Government to—

(a) "LAND-GRANT DEDUCTIONS" on account of the transportation during the years 1920 to 1923, inclusive, of—

(1) Military **Prisoners and Guards** en route to military prisons, or elsewhere, and **certain other Enlisted Men** erroneously grouped under **Prisoners and Guards.** Costs in numerous instances shown to be charged against Prisoners. Finding VI, (R. 67-69).

(2) Members of the **Officers' Reserve Corps** of the Army traveling in peace time to and from encampments under orders of the Secretary of War. Finding VII, (R. 69).

(3) **Navy Nurses** (Female). Finding VIII, (R. 70).

(4) **Engineer Officers of the War Department** traveling for purposes connected with river and harbor improvement work, or attending meetings of the California Debris Commission—**Non-Military.** Finding IX, (R. 70-71).

(5) **Enlisted men of the Army accompanying the remains of deceased soldiers.** Finding X, (R. 71, 77).

(6) **Enlisted men changing station or returning to station.** Cost shown as to be charged against soldiers. Finding XI, (R. 71-72, 77).

(7) **Officer of the Medical Reserve Corps.** Finding XII, (R. 71-72, 77).

(b) Certain so-called "PERCENTAGE DEDUCTIONS," under the alleged authority of certain Military Arrangements between the railroads and the Quartermaster General of the Army in force at the time of the aforesaid transportation.

The Court below allowed judgment to Plaintiff in the amount of $493.71 in respect of certain classes of transportation claimed by Plaintiff, namely, (a) enlisted men not shown in finding to be either prisoners or guards, but transported on Requests indorsed "Commanding Officer notified of the amount charged against soldier" ($272.05); (b) enlisted men of the Navy, "stragglers," not shown in finding to be either prisoners or guards, transported on Requests which the Court of Claims inferred bore indorsement that amount was to be charged against the soldiers ($50.24); (c) escorts (civilian attendants) accompanying remains of deceased soldiers, and remains of deceased soldier ($60.58); (d) retired officers and enlisted men ($64.42); (e) stranded enlisted men of Navy ($46.42). Exception, of course, is not taken to these judgment items.

AMOUNTS INVOLVED

The details of amounts claimed by Plaintiff in the Court below, and the action of that Court, are shown in the following:

Analysis of Claims and Action thereon by Court of Claims, in its Special Findings of Fact (R.64-72), Conclusion of Law (R.72), and Opinion (R.72-82).

	Number of Fares	Land-Grant Deductions	Percentage Deductions under Military Arrangements	Total
FINDING VI (R.67-69) (Claim in Exhibit A to Second Amended Petition (R.21-38)).				
1(Sub 1)-PRISONERS and GUARDS--484 persons transported on Requests indorsed: "Commanding Officer notified of the amount charged against soldier." Of these the cost of transportation was:				
(a) Actually not charged back to soldier (general military prisoners) (R.67)	41	$ 286.89	$ 2.86	$ 291.75
(b) Charged back to soldiers (under guard, but not general military prisoners) at commercial fares (422 in number), and collected to following extent:				
(1) Collected in full (R.68).....	235	1,767.38	43.70	1,811.08
(2) Not collected (R.68).....	154	1,126.33	29.59	1,155.92
(3) Collected in part only. ($952.92 charged back to soldiers, but only $645.43 collected). (R.68)	33	396.40	7.19	402.59
	422	3,289.05	80.48	3,369.53
(c) Erroneously charged back to soldier, (on Request 3317436), but subsequently canceled on the ground that the charge was erroneously made.	1	6.80	---	6.80
Totals--1(Sub 1).....	464	$ 3,584.74	$ 83.34	$ 3,668.08
1(Sub 2)-ENLISTED MEN-not shown in Finding to be either Prisoners or Guards, but transported on Requests indorsed: "Commanding Officer notified of the amount charged against soldier," [Judgment was denied to plaintiff by Ct.Cls. for this item, $271.64, on theory that as to these persons, their transportation was to be charged against them because it was not travel for which land-grant deductions could be taken," citing U.P.Case, 266 U.S. 364] (R.68, 81-82).	23	$ 271.64	$ 0.41	$ 272.05
	23	$ 271.64	$ 0.41	$ 272.05

	Number of Fares	Land-Grant Deductions	Percentage Deductions under Military Arrangements	Total
FINDING VI (R.67-69)--Continued.				
1(Sub 3)-ENLISTED MEN, NOT SHOWN IN FINDING TO BE EITHER PRISONERS OR GUARDS, transported on Requests which did not bear indorsement that amount was to be charged against soldiers. (R. 66, 68).	6	108.27	3.41	111.68
	6	$ 108.27	$ 3.41	$ 111.68
1(Sub 4)-ENLISTED MEN (OF NAVY), "STRAGGLERS," NOT SHOWN IN FINDING TO BE EITHER PRISONERS OR GUARDS, transported on Requests which the Ct.Cls. inferred bore indorsement that amount was to be charged against the soldiers. [Judgment was awarded to Plaintiff by Ct.Cls. for this item $50.24.] (R.69, 88).	8	* 45.36	* 4.88	* 50.24
	8	*$ 45.36	*$ 4.88	*$ 50.24
Totals 1(Subs 1, 2, 3, 4).....	501	4,010.01	92.04	4,102.05
1(Sub 5)-Additional fares and deductions to make up the totals of items shown in Finding VI, Par.2 (R.67).	708	10,933.40	145.80	11,079.20
Totals claimed by Plaintiff per Finding VI, Par 2. (R.67)	1209	14,943.41	237.84	15,181.25

NOTE:
Finding VI, Par.2, shows the following items in Exhibit A to Second Amended Petition:

(R.21-38)	Number of Persons	Land-Grant Deductions	Percentage Deductions	Total
PRISONERS....	196	$ 1,794.46	$ 50.34	$ 1,844.80
GUARDS.....	680	6,135.33	115.32	6,240.65
PRISONERS and GUARDS	333	7,023.62	72.18	7,095.80
	1209	$14,943.41	$ 237.84	$15,181.25

1(Sub 6)-Additional fares and deductions to make up totals of items in Exhibit A to Second Amended Petition (R.21, 38) covered by Finding VI, Par.1.	36	425.27	11.07	436.34
Totals, claimed in Exhibit A to Second Amended Petition (R.21-38) under Finding VI (R.67-69)	1245	$15,368.68	$ 249.51	$15,618.19

NOTE:
The additions per divisions 1(Sub 5) and 1(Sub 6), above, are made necessary to balance the totals with Exhibit A to Second Amended Petition (R.38) which shows all amounts claimed therein as being account of PRISONERS and GUARDS, as follows: Number of Fares, 1245;

	Number of Fares	Land-Grant Deductions	Percentage Deductions under Military Arrangements	Total
FINDING VI (R.67-69)--Continued				
Land-Grant Deductions, $15,368.68; Percentage Deductions, $249.51; [Total $15,618.19]. Finding VI. Par.1. (R.67). states as to said Exhibit: "Military Prisoners and Guards.--The persons referred to in Exhibit A to the petition(which is made a part of this finding by reference) as prisoners and guards were either (1) general military prisoners and their guards, i.e., enlisted men of the Army, Navy, or Marine Corps, who had been convicted of some offense by general court-martial and were en route, under the guard of other enlisted men of the Army, Navy, or Marine Corps, to military prisons to serve their sentences, said prisoners not having been discharged from the military service; or (2) enlisted men of the Army, Navy, or Marine Corps, who, for some reason other than conviction and sentence by general court-martial, were traveling under like military guard to the destinations named in the departmental requests covering their transportation."				
FINDING VII (R.69) Claimed in Exhibit B to Second Amended Petition (R.39-45))				
2--MEMBERS OF THE OFFICERS' RESERVE CORPS, traveling to and from Encampments under orders of the Secretary of War		1,176.36	16.03	1,192.39
Totals, under Finding VII.....		$ 1,176.36	$ 16.03	$ 1,192.39
FINDING VIII (R.70) (Claimed in Exhibit B to Second Amended Petition) (R.46-51).				
3--NAVY NURSES (Female)				
(a) Ordered home for discharge, which took effect after their arrival home.		132.70	1.59	134.29
(b) Reporting for service under initial orders.		23.33	---	23.33
(c) Being transferred to new stations for duty.		345.99	2.62	348.61
(d) Ordered to accompany another nurse home.		17.05	---	17.05
Totals, under Finding VIII.....		$ 519.07	$ 4.21	$ 523.28
FINDING IX (R.70, 71) (Reference to Exhibit B to Second Amended Petition (R.52-55)).				
4--ENGINEER OFFICERS OF THE WAR DEPARTMENT on Duty in connection with River and Harbor Works and the California Debris Commission--NON-MILITARY. (R. 74-77).	59	456.77	4.36	461.13
Totals, under Finding IX.....	59	$ 456.77	$ 4.36	$ 461.13

	Number of Fares	Land-Grant Deductions	Percentage Deductions under Military Arrangements	Total
FINDING X (R.71) (Reference to Exhibit B to Second Amended Petition (R.56, 57)).				
5--RECORTS accompanying the Remains of Deceased Soldiers.				
(a) Two (2) fares were for civilian attendants, and one (1) fare for the remains of deceased soldier. [Judgment was awarded Plaintiff by Ct.Cls. for this Item $60.55. (R.77)]	3	$ 53.88	$ 6.70	60.55
(b) Military Escorts.....	17	128.67	8.87	137.54
Totals, under Finding X.....	20	$ 182.55	$ 15.57	$ 198.12
FINDING XI (R. 71) (Reference to Exhibit B to Second Amended Petition (R.58))				
6--ENLISTED MEN Changing Station or Returning to Station, transported on Requests indorsed "Commanding Officer notified of the amount to be charged against soldier." (Finding says: "It has not been ascertained whether any such charges were made or collected." [NOTE: This item, $99.66, was not discussed in the Opinion below.]	6	99.66	---	99.66
Total, under Finding XI.....	6	$ 99.66	---	$ 99.66
FINDING XII (R.71, 72) (Reference to Exhibit B to Second Amended Petition (R.58)).				
7--RETIRED OFFICERS and ENLISTED MEN--				
(a) Transported after date of retirement, and not called to active duty (Requests 2088888, 2088921, and 2088997, and..... Request 2132128)..... [Judgment was awarded Plaintiff by Ct.Cls for these two Items $53.30 and $11.05, [total $64.42] as retired officers and enlisted men citing U.P.Case 249 U.S. 364.] (R. 71, 77).	3 1	$ 48.84 8.61	$ 5.15 2.42	$ 53.99 11.03
	4	56.85	7.57	64.42
(b) Officers Transported after date of retirement, but recalled to active duty. (Requests 2077975, 2087365) (R.71, 77).	2	30.27	0.61	30.88
(Request 2128008) (R.72, 77)..... [These items, aggregating $31.61, were waived by Plaintiff in proceedings below]	1	30.47	0.46	30.93
	3	$ 60.74	$ 1.07	$ 61.81

	Number of Fares	Land-Grant Deductions	Percentage Deductions under Military Arrangements	Total
FINDING XII (R.71, 72)--Continued				
7--RETIRED OFFICERS and ENLISTED MEN (Continued)				
(c) Medical RESERVE CORPS Officers of Army prior to relief from active duty (Request 3032350) (R.69, 72).	1	19.66	1.50	21.16
Totals, under Finding XII.....	8	$ 137.25	$ 10.14	$ 147.39
FINDING XIII (R.72) (Reference to Exhibit B to Second Amended Petition (R.60)).				
8--STRANDED ENLISTED MEN of Navy (Requests N-01631898 and 1638074)--[Judgment was awarded to Plaintiff by Ct.Cls.for this $46.42, on theory that "Stranded Enlisted Men" are of a status equivalent to men on furlough, citing U.P.Case, 249 U.S.364, 380]. (R.78).	2	* 46.42	---	* 46.42
Totals, under Finding XIII.....	2	*$ 46.42	---	*$ 46.42
Grand Totals.....		$17,966.96	$ 299.82	$18,266.78
The foregoing shows that, of the above totals, Judgment below was awarded Plaintiff for the items marked (*).		*$ 474.15	*$ 19.56	*$ 493.71
It also shows that Plaintiff, in proceedings below, waived claim for items marked (ó).		ó$ 60.74	ó$ 1.07	ó$ 61.81
Totals.....		$ 534.89	$ 20.63	$ 555.52
This leaves balances claimed by Petitioner here.		$17,432.07	$ 279.19	$17,731.26
The foregoing also shows that above totals include claims for deductions made from charges for persons whose transportation was furnished on Requests indorsed: "Commanding Officer notified of amount charged against Soldier," and not included in Judgment amount as follows:				
Finding VI--1(Sub 1)--(R.67).....	464	3,584.74	83.34	3,668.08
Finding XI--(R.71).....	6	99.66	---	99.66
Totals.....	470	3,684.40	83.34	3,767.74
It also shows above totals include claims for deductions made from charges for transportation of members of OFFICERS' RESERVE CORPS, as follows:				
Finding VII--(R.69).....		1,176.36	16.03	1,192.39
Finding XII--7(c)--(R.69, 72).....	1	19.66	1.50	21.16
Totals.....		1,196.02	17.53	1,213.55

The particular reference to these last two sets of totals is because the items thereof overlap in the statement of the Findings as analyzed above.

The amounts claimed by Petitioner cover the period from November 1, 1920, to August 31, 1923, inclusive. Since that time the importance of the question of the right to charges, as claimed by it, has largely increased because of the greater numbers of persons transported in subsequent years, especially of members of the *Reserve Corps* bodies, and *Army Engineer Officers* engaged on *non-military duties*. Furthermore, the so-called "land-grant deductions," complained of, would be a continuing burden for all years to come.

Of course, the "land-grant deductions" and "percentage deductions," as claimed by Petitioner in this proceeding, are only a small part of the *total of deductions annually from all the railroads of the United States.*

THE STATUTES INVOLVED, AND THE DIFFERENT CLASSES OF LAND-GRANT RAILROADS.

There are several classes of land-grant railroads. The earliest railroad land-grant act—and which we shall therefore refer to as illustrating the *first class* of land-grant railroads—that has come to our attention is that of September 20, 1850 (9 Stat. 466), referred to in this Court's opinion March 31, 1919, in case of *United States vs. Union Pacific R. R. Co.* (249 U. S. 354, 357), under which the *Illinois Central Railroad* and the *Mobile and Ohio Railroad* were constructed. The title thereof and the provisions therein with respect to transportation for the United States are as follows:

"CHAP. LXI—*An Act granting the Right of Way, and making a Grant of Land to the*

States of Illinois, Mississippi, and Alabama, in Aid of the Construction of a Railroad from Chicago to Mobile.

* * * * * * * * *

"SEC. 4. *And be it further enacted,* That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid and no other; and the *said railroad and branches shall be and remain a public highway, for the use of the government of the United States, free from toll or other charge upon the transportation of any* PROPERTY OR TROOPS OF THE UNITED STATES. (Italics ours.)

* * * * * * * * *

"SEC. 6. *And be it further enacted,* That the United States mail shall at all times be transported on the said railroad under the direction of the Post-Office department, at such price as the Congress may by law direct."

Other railroads later were constructed under grants of land carrying like provisions.

Under the decision of this Court in *Lake Superior & Mississippi Railroad Co. v. United States,* 93 U. S. 442 (Oct. Term, 1876), these provisions were construed as giving to the United States *free* use of the roadbed as a highway, only, and thereafter companies operating railroads constructed under such provisions were permitted to charge for the use of the rolling stock and for motive power in the transportation of property and troops of the United States at rates equal to fifty percentum of those charged private parties.

What we shall refer to as the *second class* of land-grant railroads are those constructed under Acts containing provisions like those under which the *At-*

lantic and Pacific Railroad (now the Atchison, Topeka, and Santa Fe Railway Company), from Isleta, N. M., to Mojave, Calif., and the *Southern Pacific Railroad of California*, from Mojave, Calif., to Colorado River, opposite Yuma, Ariz., were aided. The Act referred to was approved July 27, 1866 (14 Stat. 292). The title thereof and the provisions relating to transportation for the United States were as follows:

> "CHAP. CCLXXVIII.—*An Act granting Lands to aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast.*
>
> • • • • • • • •
>
> "SEC. 5. *And be it further enacted,* That said Atlantic and Pacific Railroad shall be constructed in a substantial and workmanlike manner, • • • *Provided, That the said company shall not charge the government higher rates than they do individuals for like transportation and telegraphic service.* (Italics ours.)
>
> • • • • • • • •
>
> "SEC. 11. *And be it further enacted,* That said Atlantic and Pacific Railroad, or any part thereof, *shall be a post route and military road subject to the use of the United States for postal, military, naval, and all other government service, and also subject to such regulations as Congress may impose restricting the charges for such government tranportation.* (Italics ours.)
>
> • • • • • • • •
>
> "SEC. 18. *And be it further enacted,* That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this

act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

A noticeable feature of this class of land-grant railroads is that the Company is expressly permitted to charge the United States *full rates* for transportation and telegraphic service, except *only* when Congress may restrict such charges. Restriction has since been imposed, in the Army Appropriation Acts, but *only with respect to transportation of "troops and munitions of war and military supplies and property."* (See Act of July 14, 1892, 29 Stat. 180, and the Army Appropriations Acts from then to the present time.)

In this connection, certain pertinent parts from the Army Appropriation Act for the fiscal year ending June 30, 1921, Approved June 5, 1920, (41 Stat. 948, 959) are here quoted:

"TRANSPORTATION OF THE ARMY AND ITS SUPPLIES.

"For transportation of the Army and its supplies, including transportation of the TROOPS when moving either by land or water, and of their baggage, including the warrant officers of the Mine Planter Service, members of the OFFICERS' RESERVE CORPS, enlisted men of the ENLISTED RESERVE CORPS, and retired

enlisted men when ordered to active duty, including the cost of packing and crating; for transportation of recruits and recruiting parties, of applicants for enlistment between recruiting stations and recruiting depots; for travel allowance to officers and enlisted men on discharge; for payment of travel allowance as provided in section 126 of the Act approved June 3, 1916, to enlisted men of the National Guard on their discharge from the service of the United States, and to members of the National Guard who have been mustered into the service of the United States, and discharged on account of physical disability; for payment of travel pay to officers of the National Guard on their discharge from the service of the United States, as prescribed in the Act approved March 2, 1901; * * * *for the payment of Army transportation lawfully due such land-grant railroads as have not received aid in Government bonds* (Italics ours) (to be adjusted in accordance with the decisions of the Supreme Court in cases decided under such land-grant Acts), but in no case shall more than 50 per centum of full amount of service be paid; * * * *Provided*, That such compensation shall be computed upon the basis of the tariff or lower special rates for like transportation performed for the public at large, and shall be accepted as in full for all demands for such service: *Provided further*, That in expending the money appropriated by this Act a railroad company which has not received aid in bonds of the United States and which obtained a grant of public land to aid in the construction of its railroad on conditions that such railroad should be a post route and military road, subject to the use of the United States for postal, military, naval, and other Government services, and also subject to such regulations as Congress may impose restricting the charge for such Government transportation, having claims

against the United States for *transportation of troops and munitions of war and military supplies and property over such aided railroads,* (Italics ours) shall be paid out of the moneys appropriated by the foregoing provisions only on the basis of such rate for the transportation of such troops and munitions of war and military supplies and property as the Secretary of War shall deem just and reasonable under the foregoing provision, such rate not to exceed 50 per centum of the compensation of such Government transportation as shall at that time be charged to and paid by private parties to any such company for like and similar transportation; and the amount so fixed to be paid shall be accepted as in full for all demands for such service: *Provided further,* That nothing in the preceding provisos shall be construed to prevent the accounting officers of the Government from making full payment to land-grant railroads for transportation of property or persons where the courts of the United States have held that such property or persons do not come within the scope of the deductions provided for in the land-grant Acts: * * *

What we shall refer to as the *third class* of land-grant railroads is illustrated by the *Southern Pacific Company's line from Roseville Junction, Calif., to East Portland, Ore.* This road was aided under Act of July 25, 1866 (14 Stat. 239). The title thereof and the pertinent provisions relating to Government transportation are as follows:

"CHAP. CCXLII.—*An Act granting Lands in aid in the Construction of a Railroad and Telegraph Line from the Central Pacific Railroad, in California, to Portland, in Oregon.*

* * * * * * *

"SEC. 5. *And be it further enacted,* That the grants aforesaid are made upon the condition that the said companies shall keep said railroad and telegraph in repair and use, and shall at all times transport the mails upon sail railroad, and transmit despatches by said telegraph line for the government of the United States, when required so to do by any department thereof, and that *the government shall at all times have the preference in the use of said railroad and telegraph therefor at fair and reasonable rates of compensation, not to exceed the rates paid by private parties for the same kind of service.* (Italics ours.) And said railroad shall be and remain a public highway for the use of the government of the United States, free of all toll or other charges upon the transportation of the *property or troops of the United States*; (Italics ours) and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the government of the United States."

It will be observed that this is another class of land-grant railroads which were expressly permitted to charge *full rates* for railroad and telegraph service performed for the United States, not to exceed rates paid by private parties, *except* that it was to transport *free* the "property or troops of the United States." This requirement for *free* transportation of *property or troops of the United States* continued for the period of time down to May 23, 1928, on which day the President approved an Act to the effect that it should be a "*50 per cent railroad,*" as follows (45 Stat. 722):

"CHAP. 720.—An Act For the relief of the land-grant railroad operated between the station formerly known as East Portland, in the State of Oregon, and Roseville, in the State of California.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the land-grant railroad heretofore operated, and now being operated between the station formerly known as East Portland, in the State of Oregon, and Roseville, in the State of California, shall hereafter receive compensation for transportation of property and troops of the United States at the same rate as is paid to land-grant railroads organized under the Land Grant Act of March 3, 1863, and the Act of July 27, 1866 (chapter 278): *Provided,* That the Congress hereby reserves the right at any time by law to prescribe such charges as it deems advisable for such Government transportation."

The land-grant act of March 3, 1863 (12 Stat. 772), therein referred to, was in aid of the Atchison, Topeka and Santa Fe Railway Company's line from Lawrence, Kans., to Humboldt, Kans., and was similar in all essential parts, so far as it relates to Government transportation, to the Act of September 20, 1850 (9 Stat. 566), above, under which the Illinois Central Railroad and the Mobile and Ohio Railroad were aided. The Act of July 27, 1866 (14 Stat. 292), referred to, is the one under which the Atchison, Topeka and Santa Fe Railway Company's line from Isleta, N. M., to Mojave, Calif., and the Southern Pacific Railroad of California from Mojave, Calif., to Colorado River, opposite Yuma, Ariz., were aided.

It will, therefore, be seen that, under this Act of May 23, 1928, the Congress directed that the Company operating the said railroad should thereafter be paid 50 per centum of full charges for transportation of *property and troops of the United States,* instead of having to transport same *free.*

This Act is here presented as one of the evidences that *Congress has never sought to increase the burdens of these land-grant provisions, but rather has sought to relieve railroads therefrom.*

There is a *fourth class* of land-grant railroads which may be referred to, namely, those which also received aid in bonds from the United States. This class of roads is illustrated by the *Union Pacific Railroad* and the *Central Pacific Railroad* (the latter now is operated by *Southern Pacific Company*). These roads extend from Omaha, Nebr., to San Francisco Bay, Calif. They were constructed under the Act of July 1, 1862 (12 Stat. 489) as amended by the Act of July 2, 1864 (13 Stat. 356). The title of the Act of July 1, 1862, and its provisions, so far as they relate to transportation for the United States, read as follows:

> "CHAP. CXX.—*An Act to aid in the Construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to secure to the Government the Use of the same for Postal, Military, and Other Purposes.*
>
> * * * * * * *
>
> "SEC. 6. *And be it further enacted,* That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line

Corrected Note on page 19 of Petitioner's Brief on Certiorari in the Supreme Court U. S., *re So. Pa. Co. vs. U. S.*, No. 339, October Term, 1931. (Correction consists of addition shown in **bold type.**):

"(Note: The provision with regard to 'all compensation for services rendered for the government' being applied to payment of the bonds, issued to aid these railroads, was changed by the Act of July 2, 1864, so that only *one-half* of such compensation was retained for such purpose.

"**Later by the Act of May 7, 1878, 20 Stat. 56 (Thurman Act, the remaining one-half of such compensation was to be placed in a Government managed Sinking Fund to be used as a guaranty of final payment of the indebtedness that would become due at maturity of the bonds issued to these companies by the United States. In the 'Sinking Fund Cases,' 99 U. S. 700, it was expressly held that the earnings so placed in the Sinking Fund remained the property of the companies, and that the contracts of all the parties under the Act of July 1, 1862, as amended by the Act of July 2, 1864, remained unimpaired.)**"

in repair and use, and *shall at all times transmit despatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the government* (italics ours), whenever required to do so by any department thereof, and that the government shall at all times have the preference in the use of the same for all the purposes aforesaid (*at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service*); (italics ours), and all compensation for services rendered for the government shall be applied to the payment of said bonds and interest until the whole amount is fully paid: * * *"

(Note: The provision with regard to "all compensation for services rendered for the government" being applied to payment of the bonds, issued to aid these railroads, was changed by the Act of July 2, 1864, so that only *one-half* of such compensation was retained for such purpose.)

These so-called "Pacific Railroads" were not required to suffer any deduction from the amounts of their charges, and it will be observed that they, like the prior two *classes* of land-grant roads described herein, were expressly permitted to charge *full rates* for transportation for the United States the same as private parties.

Other Acts of Congress, which may relate to particular classes of transportation involved in this case, will be quoted, or referred to, under separate headings that may follow.

ARGUMENT.

I.

The term "troops," as used in the Railroad Land-Grant Acts, had an established meaning, namely, "soldiers collectively, a body of soldiers," at the time of enactment thereof.

The expression "troops of the United States" was undoubtedly used in the land-grant acts in its usual and ordinary sense, as signifying "soldiers collectively—a body of soldiers." It might be sufficient in this connection, to cite only this Court's holding in the case of *United States vs. Union Pacific Railroad Co.*, 249 U. S. 354, where it was stated,

> "In 1850 the word 'troops' had (and it has ever since had) an established meaning:—namely, 'soldiers collectively,—a body of soldiers.'"

This conclusion was reached in the following statement in said decision (pp. 356-358):

> "In defining the transportation rights secured to the United States, these land-grant acts draw a broad distinction between freight and passengers. All 'property' of the Government, whatever its character and intended use, is to be carried 'free of toll or other charge'; but of the many persons in its service, only 'troops'. The history of the legislation shows that both the broad term, 'any property', and the narrower one, 'troops', was adopted deliberately. The earliest land-grant act in which the provision appears is that of September 20, 1850, c. 61, sec. 4, 9 Stat. 466, 467, under which the Illinois Central was constructed. The bill as introduced provided for the free transportation of 'troops

and munitions of war'. It was amended so as to read 'any property or troops'. There had been an earlier act granting land to the State of Illinois for the construction of a canal (Act of March 30, 1822, c. 14, 3 Stat. 659) which was amended (Act of March 2, 1833, c. 87, 4 Stat. 662) so as to permit, on the same terms, the use and disposition of the land for railroads. That act provided for the free transportation of 'any property of the United States, or persons in their service.'

"*In 1850 the word 'troops' had (and it has ever since had) an established meaning:—namely, 'soldiers collectively,—a body of soldiers.'* (Italics ours.) Thus the Army Appropriation Act of that year (Act of September 28, 1850, c. 78, sec. 1, 9 Stat. 504, 506) provides for the 'transportation of the army, including the baggage of the troops when moving either by land or water' and for 'mileage, or the allowance made to officers for the transportation of themselves and baggage when travelling on duty without troops.' The contemporary legislation draws a clear distinction also between troops, that is, *those then having the status of soldiers* (Italics ours), and those who once had been in, or were seeking to enter, the military service. Thus the Army Appropriation Act of March 2, 1847, c. 35, 9 Stat. 149, 151 (which provides in substantially the same terms as that of 1850 for the transportation of troops) makes specific provision for 'forwarding destitute soldiers to their homes', for the 'comfort of discharged soldiers', and for 'expenses of recruiting', which include the cost of transportation. See Army Regulations, 1857, sec. 1321. And the Resolution of March 3, 1847, [No. 7], 9 Stat. 206, authorizes the refund of moneys expended by the States and individuals 'in organizing, subsisting,

and transporting volunteers previous to their being mustered and received into the service of the United States for the present war, and for subsisting troops in the service of the United States.' In view of the established meaning of the term 'troops' as used by Congress the duty of the court is merely to apply the provisions of the act to the several classes of persons described above."

The title of the Act of March 30, 1822 (C. 14, 3 Stat. 659) referred to in the above quotation, and the pertinent provision thereof, read as follows:

"CHAP. XIV.—*An Act to authorize the state of Illinois to open a canal through the public lands, to connect the Illinois river with Lake Michigan.*

* * * * * * *

"* * * *Provided also, and it is hereby further enacted and declared,* That the said canal, when completed, shall be, and for ever *remain, a public highway for the use of the government of the United States, free from any toll or other charge whatever, for any property of the United States, or persons in their service,* [Italics ours.] passing through the same."

This appears to be the first land-grant legislation in aid of transportation in the United States, and by its terms would have permitted free use of the highway for *all persons* in the service of the United States. But such a broad requirement never appeared in any subsequent legislation. The broadest term thereafter used was "troops." And so it was continued through all the years, without any attempt to enlarge the term, or to define it in any manner other

than that they should be "troops of the United States."

It might be well here to state some of the incidents going to make up the *history of the times* so as to show that what was contemplated was that only *bodies of soldiers in actual defense of the nation and its frontiers* were considered as *troops* back in the days of this legislation, as indeed also in the present days.

Thus, in "American State Papers—Public Lands" (Vol. VIII, P. 593) will be found an early discussion of the proposed grant of lands to the Illinois Central Railroad Company, from which we quote the following:

"24th Congress. No. 1498. 1st Session.

"IN FAVOR OF A GRANT OF LAND TO AID IN THE CONSTRUCTION OF THE ILLINOIS CENTRAL RAILROAD.

"Communicated to the House of Representatives, March 31, 1836. Mr. Casey, from the Committee on the Public Lands, to whom was referred the memorial of the Illinois Central Railroad Company, reported:

"That by an act of the legislature of the State of Illinois, approved on the 16th January, 1836, a company was incorporated, and authorized, and empowered, to locate, construct, and finally complete a railroad, commencing at or near the mouth of the Ohio river, in the State of Illinois, thence north to a point on the Illinois river, at or near the termination of the proposed Illinois and Michigan canal, with the right to extend the same to the town of Galena in the said State.

* * * * * * * *

"When the Mississippi and Ohio are fast bound up in ice, *troops and munitions of war can*

be transferred with a rapidity and despatch unknown to water transportation, to the frontiers of Illinois, Wisconsin, and Northern Missouri, whence they can be *stretched along the lines of these frontiers in an incalculably short period of time.*

* * * * * * * *

"Considered then as a facility of carrying out a system about undergoing the action of Congress, for the transportation of the United States mail, it should be regarded in a most favorable light. It is also in contemplation, (and recent experience proves that it is only necessary to conceive a work of internal improvement, to carry it into effect,) to extend the road from the mouth of the Ohio to Nashville, in the State of Tennessee, to meet the projected road from that city to New Orleans, and to unite with branches of the great Charleston project, and the contemplated Baltimore and Ohio, and Richmond railroads.

"The completion of these great works would identity the interests of the whole valley of the Mississippi, and bring the west and the south into the most intimate communion. Viewing this subject in every possible point of light, as creating at its southern termination, a commercial emporium of great future consequence to the commerce of the western States, at which will concentrate the trade from the sources of the Mississippi and Missouri, the mineral regions of the north and southern Missouri, the manufactures of the Ohio and tributaries, the rich products of the southern country, brought in exchange for the superabundant productions of the rich soils of Illinois; *or as giving value to millions of acres of the public domain, which are now wholly worthless and unsaleable;* or as enhancing the revenues of the State, and contributing to its welfare and prosperity, in the increase of its population, wealth, and intelligence; and in direct

and positive benefits to the people, or as *creating great facilities in the conveyance of the mail, the* TRANSPORTATION OF TROOPS AND MUNITIONS OF WAR *from one extreme of the country to another, at all seasons of the year, in one fourth of the time, and at one-half the expense now required,* or its effects upon the social and political relations of a large portion of the American people, or their public, or their private interests; it operates upon each and all in the most beneficial manner."

Then, on April 10, 1854, Senator Guin, of California, speaking in the United States Senate upon the proposed Pacific Railroad, among other things said, —capitalization ours—(Cong. Globe, Vol. 28, p. 879):

"As a *military road,* it should engage our attention as a means of protection to our citizens between the Mississippi and the Pacific.

* * * * * * * * *

"The contemplated railway would enable the Government to wield its military power with extraordinary rapidity and economy, and keep in check the dangerous and warlike tribes that roam along the foot of the Rocky Mountains; would reduce the public expenditures for the transportation of TROOPS and military supplies * * *"

Referring to the purposes for which the Constitution was framed, as stated in its preamble, Senator Guin further said (*id.*):

"The measure before us is one emphatically required at your hands by those significant terms. By accomplishing it, foreign fleets and armies will in vain assail us upon the Pacific or Atlantic. From ocean to ocean this new means of communication will carry our TROOPS and munitions of

> war, and enable us, by rapidity of overland communications to use the *military power with such celerity as to defy successful invasion from any quarter.* The Commander-in-Chief at Washington could issue his orders and *move his armies* with as much dispatch, from this to the other side of the Continent, as did the great Emperor in the field of his extensive operations during the wars of the First French Revolution * * * In case of war how are you without it to defend California and New Orleans? Where is your Navy by which to accomplish such a purpose? Where are your transports, or how would they reach their destination? How would you carry TROOPS, munitions or supplies over the mountains, and desert that separates the Pacific from the Mississippi?"

In *Dunn v. The People,* 94 Ill. 120, the Supreme Court of Illinois, referring to the word "troops" as used in the provision of the Federal Constitution (Art. I, sec. 10) that "No State shall, without the consent of Congress, * * * keep troops or ships of war in time of peace", said:

> "The word 'troops' conveys to the mind the idea of an armed body of soldiers whose sole occupation is war or service, answering to the regular army."

All the Standard Dictionaries define the term "troops" in substantially the same way: *i. e.,* as a body of soldiers.

In *Lake Superior & Mississippi Railroad Co. v. United States,* 93 U. S. 442, this Court, in holding that the provision in the Act of May 5, 1864 (13 Stat. 64), that "the said railroad shall be, and remain, a public highway for the use of the Government of the United

States, free from all toll or other charge for the transportation of any property or troops of the United States," did not entitle the Government to the *free transportation* of its troops and property by the railroad company, but only gave it the *free use of the railroad's highway as a means of transportation,* said (p. 454):

> "* * * It might have been very convenient for the Government to have more rights than it has stipulated for; but we are on a question of construction, and on this question the *usus loquendi* is a far more valuable aid than the inquiry what might be desirable."

We are here concerned likewise only with a matter of statutory construction, and while it might have been desirable, from the Government's standpoint, for Congress, in all the land-grant Acts, to have reserved the right to transport anything or anybody it might see fit over the public highway so created, free or at reduced rates of charge, for the use of the same, as a matter of fact it only reserved the privilege of free or reduced rates of charge for the transportation of its "property or troops", and the *usus loquendi* with respect to the word "troops", does not permit of its extension beyond the meaning of the term at the time it was used.

We are not here concerned with the transportation of any body of soldiers—an army, or a detachment thereof,—but only, for the most part, with the transportation of *certain individuals.* Of the total of *1556* persons transported according to the Plaintiff's petition in the Court below (R. 21-61), the largest party moved was 29 in number. In all there were *770* separate Transportation Requests; therefore, the average number of persons transported on each

Request was only *two (2)*. None of the total of 1556 persons had anything to do with any *military expedition.*

It seems plain, therefore, there was no movement whatever of "soldiers collectively—a body of soldiers," within the interpretation by this Court of the term "troops."

II.

The term "Troops of the United States" can embrace only persons who are soldiers, and are in the military service as a business or profession; and cannot embrace persons who are engaged for a period of a few days only, and then merely for training purposes.

It seems impossible to conceive, when one reads the Statutes under which the land-grants were made to the railroads, that either the legislators or the builders of those roads could have had any other idea in mind than that the persons to be transported thereon as "troops of the United States" would be *actually engaged in the pursuit of arms as a business or profession and at least for the chief portion of their working time.*

Within the meaning of the word "troops," there is, in fact, no room for classification of persons who do not give their entire, or, at least, the chief part of, their working time to the business of a *soldier.* Troops, or soldiers, may fairly well be defined as *military forces,* and as to these we quote the following from "Military Laws of the United States" (1921), P. 1095:

> MILITARY FORCES.—The invariable policy of the Government has been to consider the military forces as falling into *two classes*: Those who were soldiers or sailors by profession, irrespective of the national exigency, who took war when it came, and, if they survived it, continued to make military occupation the business of their lives; *second*, those who left their ordinary avocations at the outbreak of or during the continuance of hostilities and enlisted with the expectation of serving only so long as the exigency continued. *Cleary v. U. S.*, 35 Ct. Cls. 207, 211.

It will be seen from this that there is no place in the military field, covered by "troops," for any classification whatever of persons who may not engage in the business of soldiers except for only fifteen/three hundred and sixty-fifths (15/365ths) part of any one year.

III.

MILITARY SERVICE, and not merely military connection with the Army, or the Military Establishment, is necessary to constitute "Troops of the United States."

A mere *military connection* with the Army of the United States or the Militia Establishment, no matter how close the connection may be, does not constitute a person one of the "troops of the United States." Thus it was said by this Court in the *Union Pacific Case* (249 U. S. 354, 359), with regard to *applicants for enlistment in the Army:*

> The fact that under the Army Regulations he receives the same rations as an enlisted man, and

> that he is subject to the same medical attention, [Army Regulations, 1913, secs. 1224, 1225, 1232, 1473, 1476.] does not effect a change of status. And the fact that the transportation is for the purposes of the Government in connection with its military establishment is immaterial. Workmen in armor plants and civilian clerks in the War Department at Washington travel for purposes of the Government, but are obviously not "troops of the United States" within the meaning of the land-grant legislation. The Army Appropriation Acts make specific provisions for the transportation of "troops" and of "recruits."

In the last mentioned connection see Army Appropriations Act approved June 5, 1920 (41 Stat. 948, 959), (quoted, *supra*, p. 13).

Surely no person can be more intimately *connected with* the Army than is the Secretary of War, the head of the War Department, and through whom the President, the Commander-in-Chief, speaks to the highest and lowest in the Army service, and yet it is a fact that *the Secretary of War is not even any part of the Army.* This was held by Attorney General Wirt back in 1821 (1 Op. Atty. Gen. U. S., 457; cited in Military Laws of the U. S. (1921), p. 322).

This Court, in *Stuart vs. United States* (18 Wall. 84), held that (quoting from the syllabus):

> "A contractor with the government to transport from port to port, remote from any seat of war, stores and supplies not forming any portion of the stores or supplies of an advancing or retreating army, is not a person 'in the military service of the United States' within the second section of the act of March 3d, 1849, 'to provide for the payment of horses and other property lost' in that service."

In that case the Court had under consideration a contract of one Stuart with the United States providing that he should transport *military stores and supplies* from Forts Riley and Leavenworth, etc., to New Mexico or Colorado at stipulated prices; that he should be furnished with a suitable escort for the protection of the supplies within certain quantities, and should provide his own escort with regard to greater quantities. While executing his contract he alleged that in the month of *July, 1864,* he had been attacked by a "band of hostile Indians" and that fifty-six head of oxen, his own property, were captured, and no part thereof recovered. Stuart claimed indemnity under the Act of March 3, 1849 (9 Stat. 414), entitled, "An act to provide for the payment of horses and other property lost or destroyed *in the military service* of the United States."

The Court denied Stuart's claim, and one of the reasons for doing so was that the captured oxen were *not* "in the *military service* of the United States" because the *contractor* for the transportation of the military supplies was not "in the military service," and that he was in no sense a *soldier.* The Court's opinion in that case throws considerable light on what constitutes a *soldier* and *military service.* At pages 88, 89, it said:

> "A contractor or carrier is in no sense a soldier. In no just sense is he engaged in war, although he may transport the articles used in war. He carries forth and he carries back supplies and stores for those who are engaged in war, but takes no personal part in it. He carries, in the present case, during the period between April and September, of the year 1864, from the points to

the points named. There is no allegation that in the month of July, when the capture took place, actual war was going on in Kansas, or in the region between Kansas and New Mexico, or Colorado, or that the train from which the capture was made was a part of a *military expedition. The stores, supplies, baggage trains, the 'impedimenta' of an army, are undoubtedly a portion of the army, and those engaged in the management and control of them are in the military service.* (Italics ours.) These are indeed vital to its existence, and their collection and protection are among the most anxious duties of a careful commander. *But the collection and transportation from post to post of stores and supplies, remote from the seat of actual war, not forming a portion of an advancing or retreating army, is quite another thing. These latter duties are those of a commissary or quartermaster, and not of a commanding officer. They may be performed by soldiers or by civilians, by the army or by contractors. Those engaged in them may or may not form a portion of an army.* (*Italics ours.*)

"That the statute of 1849, under which this claim is made, was intended for the indemnity of those engaged in the actual military service of the United States, that is, for enlisted men while in the performance of their duties as such, is plain enough.

"This second section, under which the present claim is made, provides in its first clause for an indemnity for the loss of any horse, mule, ox, wagon, etc., arising from capture or destruction by an enemy, or where the property has been abandoned or destroyed by the order of a commanding officer, while such property was in the military service of the United States, either by impressment or by contract. *This military service is the same as that spoken of in the first sec-*

tion, to wit, in battle, or service as soldiers (Italics ours) under the command of officers of the army. The destruction, abandonment, or capture is that of the same enemy, to wit, an organized hostile force. And the same rule is applicable whether the property was in such actual service by the consent and agreement of the owner, as by hire, or whether it had been forcibly seized by the government, that is to say, 'either by impressment or contract,' unless the owner had agreed himself to bear the hazard of the loss."

Here was a case where, during a period of *actual war,* a person, in so intimate a relation to the Army of the United States as to be required to carry *military supplies* between points not in the immediate area of war, was held not to be so connected with the *soldiery* of the nation as to be considered in the "military service."

IV.

When the transportation of an individual, or parties of individuals, disconnected from a military expedition, is involved, not only is the status of each individual (whether civil or military) to be considered, but also is the purpose of his transportation.

In the *Union Pacific Case* (249 U. S. 354)—so frequently referred to herein because it was so comprehensive of the principles governing in the present case—the purpose of transportation of persons connected with the Army, as individuals, or as groups of individuals, was stated with relation to the several classes of persons therein considered and held *not*

to be "troops of the United States" within the meaning of the Land-Grant Acts, namely, *Discharged Soldiers; Discharged Military Prisoners; Rejected Applicants for Enlistment; Accepted Applicants for Enlistment; Retired Soldiers en route to their homes after retirement; and Furloughed Soldiers, that is, enlisted men of the Army on furlough en route back to their proper stations.* This Court said (pp. 356 and 360):

> "None of these persons travelled as part of a moving army, troop, or body of soldiers. That is, they travelled separately as individuals, and (with few exceptions) each on a different day and to widely scattered destinations. Under recent Acts of Congress and Army Regulations, the transportation of persons of some of these classes is paid for by the Government.
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> * * * * * * * * *
>
> "*Fourth. The furloughed soldier is, of course, a part of the Army or troops of the United States;* (italics ours) but his transportation back to the proper station, is not "transportation of troops" within the meaning of the land-grant acts. The furloughed soldier travels for his own purposes. The Government merely advances to him the cost of transportation and subsistence while on furlough; and does this, only if the soldier lacks funds to bear the expense himself. The advance must be repaid. Army Regulations, 1913, sec. 110."

It is made clear therein that even though a person transported is actually a *soldier*, and one of the "troops of the United States," yet he may *not* be *one of the "troops of the United States," within the meaning of the Land-Grant Acts.*

V.

If there is any doubt or ambiguity in the language of the Land-Grant Acts with regard to the obligation to transport "troops of the United States" at reduced rates of charge, such doubt should be resolved against any broadening of the term, and its meaning should be limited to the ordinary and usual sense in which it was understood at the time of the enactment of the Statutes in which used.

Unfortunately some persons called upon to apply the Land-Grant Acts to transportation for the United States are prone to become confused in the rules of interpretation applicable. They have heard of the rule of construction referred to by this court in *Slidell v. Grandejean*, 111 U. S. 437:

> "It is also a familiar rule of construction that where a statute operates as a grant of public property to an individual, or the relinquishment of a public interest, and there is a doubt as to the meaning of its terms or as to its general purpose, that construction should be adopted which will support the claim of the Government rather than that of the individual. Nothing can be inferred against the State. As a reason for this rule it is often said that such acts are usually drawn by interested parties, and they are presumed to claim all they are entitled to."

The principle thus stated by the Supreme Court is applicable, in terms, only to "a grant of public property to an individual, or the relinquishment of a public interest." It has no application to a provision in a railroad land-grant Act by which *a privilege is ex-*

acted of the grantee railroad for the benefit of the United States. Certainly, such a *privilege* is not to be enlarged by doubtful construction, especially where, as here, such enlargement would place an enormous and ever increasing burden upon the grantee.

Also it should be noted that rules of interpretation are to be invoked *only where there is doubt or ambiguity.* We respectfully submit there is no doubt or ambiguity when one looks at the situation broadly and reads the decisions of this Court and the opinions of other Courts with the attention merited by the questions involved.

Thus, the Courts of New York had under consideration in many cases (cited in Lacey's Digest of Decisions, (1875) p. 146) the words "laborer" and "labor" as used in the general railroad Act of 1850 passed by the Legislature of the State of New York, which gave a claim *against railroad companies* for the indebtedness of their *contractors* in certain cases, and to a limited amount, and the Courts held that the words "laborer" and "labor" were used in their *ordinary and usual sense. Balch v. New York and Oswego R. R. Co.,* 46 N. Y. 521, (1871). And thereafter, in *Atcherson v. Troy and Boston R. R. Co.,* 6 Abbott's Pr., N. S. (N. Y.), 329, (1856); *Same v. Same,* 1 Abbott's Ct. of Ap. Dec. (N. Y.), 13, (1856), it was held that, under said statute, a laborer employing his own teams and an assistant, under an agreement therefor with the contractors, could not recover against the Company for the services of the team or the assistant. And in *Cummings v. New York and Oswego Midland R. R. Co.,* 1 Lansing (N. Y.), 68 (1869), it was held, that to charge a railroad company under said Statute, the indebted-

ness must arise from *services personally performed by the laborers.*

There seems quite a parallel in those cases with the case here presented, as what we ask is simply that the term "troops" be interpreted according to its ordinary and usual meaning.

But the decisions of this Court, and of the Court of Claims, fully establish the fact that no mystical meaning is to be attributed to broaden the meaning of the term "troops of the United States." Besides the *Union Pacific Case,* 249 U. S. 354, we have the following:

In *Louisville and Nashville Railroad Co. v. U. S.,* 258 U. S. 374, this Court reversed the Court of Claims (55 C. Cls. 45—Case No. 147, decided April 10, 1922), wherein the majority of that Court held that the term "troops" included the *Coast Guard.* This Court stated, (P. 375):

> "The Coast Guard was established by Act of January 28, 1915, c. 20, 38 Stat. 800, in lieu of the then existing Revenue-Cutter Service and Life-Saving Service, and was composed of those organizations. The Revenue-Cutter Service had been considered a civil service, 15 Op. Atty. Gen. 396; 16 Op. Atty. Gen. 288; 8 Comp. Dec. 852; 15 Comp. Dec. 807. But to its primary function of an armed police force some characteristics of a military force had always been attached; and from time to time Congress had conferred upon it additional incidents of the military service. See 28 Op. Atty. Gen. 543, 547; 30 Op. Atty. Gen. 75. When the Coast Guard was established it was constituted "a part of the military forces of the United States"; and section 1 provides that it "shall operate under the Treasury Department

in time of peace and operate as part of the Navy, in time of war or when the President shall so direct. When subject to the Secretary of the Navy in time of war the expense of the Coast Guard shall be paid by the Navy Department." Congress further manifested its intentions to class the Coast Guard with the Army, Navy and Marine Corps by the provisions in the Acts of August 29, 1916, c. 417, 39 Stat. 556, 600, 601, and c. 418, sec. 1, 39 Stat. 610, 649.

"The military force of the United States is, and always has been a unit, although divided for purposes of administration into several branches; and there is nothing in the land-grant acts to indicate an intention on the part of Congress to differentiate between the several branches in respect to transportation charges. We are of opinion that the term "troops" is not confined to land forces, and that it includes men and officers in every branch. Since those in the Navy and Marine Corps are to be deemed troops within the meaning of those acts, members of the Coast Guard should also be deemed such when serving as part of the Navy. But at other times members of the Coast Guard are not troops."

[NOTE: The part of this decision holding that the officers and enlisted men of the Navy and Marine Corps are to be deemed "troops" within the meaning of the land-grant acts is not questioned by us, when they are, in fact, a part of the "military forces" of the United States. As to the Navy and Marine Corps we consider that the same principles of decision should apply as for officers and enlisted men of the Army. But, of course, this question is not at all involved in this case.]

In *Alabama Great Southern Railroad Co. v. The United States,* 49 C. Cls. 522, (Case No. 31872, decided May 18, 1914), the Court had under consideration whether or not the term "troops of the United States" would include the Organized Militia when being transported to and from joint camps of in-

struction of the Regular Army and the Organized Militia, and, in an opinion by Chief Justice Campbell, it was held that, notwithstanding the transportation was requested and paid for by the United States such organizations did not come within any definition of "'troops' as that word is used in the Constitution." The Court said:

> "The word 'troops' conveys to the mind the idea of an armed body of soldiers whose *sole occupation is war or service,* [*italics ours*] answering to the Regular Army. The organization of the active militia of the State bears no likeness to such a body of men." Citing *Dunne v. People,* 94 Ill., 138.

The United States did not appeal from that decision.

In *Union Pacific Railroad Company vs. U. S.,* 52 C. Cls. 226 (No. 33056, decided February 19, 1917), which is the case that was affirmed by this Court in 249 U. S. 354, the Court of Claims, by Judge Barney, stated:

> "As a condition to the granting of land to the plaintiff in this case it was provided 'such railroad shall be and remain a public highway for the use of the Government of the United States free from toll or other charges upon the transportation of any property or troops of the United States.' It becomes necessary, then, in the decision of this and similar cases to decide what classes of individuals and what individuals are embraced within the terms 'troops of the United States.' It is contended for the defendants that the law is well settled that the land-grant statute is to be construed against the railroads, and this is doubtless true as to the extent and limit of such grants. *Leavenworth, etc., R. R. v. United States,* 92 U. S., 733, 740; *Sioux City & St. Paul*

R. R. v. United States, 139 U. S., 396, 460; *Oregon, etc., R. R. v. United States,* 164 U. S., 539. But we know of no such rule made applicable to the conditions or consideration of such grants for the reason that the reason for the rule in the latter case does not exist. It was said by Justice Harlan in the opinion of the court in the Oregon, etc., R. R. case, *supra,* at page 539: 'The rule of construction applicable to the granting act is the familiar rule that all grants of this description must be construed favorably to the Government, and that nothing passes but what is conveyed in clear and explicit language.' (Citing cases.) 'And that the construction should be such as will effectuate the legislative intention, avoiding, if possible, an unjust or absurb conclusion, is also well settled.'

"We see no reason for the application of any such rule to this case, for the further reason that the only question before us for decision is the meaning and construction to be given to the simple phrase 'troops of the United States.' As was said in *Lake Superior, etc., R. R. v. United States, supra,* 'It might be very convenient for the Government to have more rights than it has stipulated for; but we are on a question of construction, and on this question the *uses loquendi* is a far more valuable aid than the inquiry what might be desirable' (pp. 454, 455).

"If we go to the dictionary for the meaning of the word 'troops' we find that it is defined in a military sense as 'a body of soldiers; a muster of soldiers; an army.' *Standard Dict.*"

The Court then cited and quoted approvingly from its decision in the *Alabama Great Southern R. R. Co. Case,* 49 C. Cls. 522, referred to above.

In *Oregon-Washington Railroad & Navigation Co. v. U. S.,* 60 C. Cls. 458, (Case No. D-12, decided April

6, 1925), the Court of Claims had under consideration the status of the *National Guard* organizations while traveling to and from camps of instruction provided by the United States for the training of the National Guard organizations of the States in the Service of the United States. This was in consequence of the National Defense Act of June 3, 1916, 39 Stat. 166, as amended by the Act of June 4, 1920, 41 Stat. 780, which provided for organization of the National Guard of the United States. The Government had urged that members of such organizations were "troops of the United States" within the meaning of the reservation in the railroad land-grant acts, thus endeavoring to broaden the meaning of the term "troops of the United States." The Court held, however:

> "When the National Guard participates in encampments and maneuvers provided for them under the provisions of the national defense act they are not in the service of the United States; they are not called forth for any of the purposes specified in the Constitution; and not being so called forth, they are not troops in the service of the United States."

It had been argued by the Government in that case that what was theretofore known as the Organized Militia had become a *Federalized organization* and therefore had become "troops of the United States" within the meaning of the railroad land-grant acts, but the Court did not agree to this view.

In none of the cases cited above did this Court, or the Court of Claims, permit the term "troops of the United States" to be broadened, but, instead, gave to that term its usual and ordinary application. This was done, also, notwithstanding the urgings of Gov-

ernment accounting officers in various decisions that the term should be construed to include practically every person who might be transported by the War Department, Navy Department, and the Marine Corps at their expense or at the expense of the persons transported, when the initial cost was upon the Government.

That the reservations in the land-grant acts should not be extended beyond their actual requirements also are evidenced by decisions of this Court and of the Court of Claims, relating to the interpretation of the term "*property* of the United States," but we do not believe it necessary to cite such decisions in the present case, other than to say they are referred to in our Petition for Writ of Certiorari (R. 1-11), said decisions being in the following cases:

Case of *U. S. v. Galveston, Harrisburg & San Antonio Railway Co.*, 279 U. S. 401, in which this Court held that the Government was *not* entitled to land-grant deductions from charges for transportation of Army officers' *private mounts, even though used in the military service,* as "*property* of the United States." (R. 3)

Case of *Oregon-Washington Railroad & Navigation Co. vs. U. S.*, 255 U. S. 339, which held that Army officers' *personal effects* transported at Government expense on change of station were not "property of the United States." (R. 8)

It would indeed be very surprising if either the term "*troops* of the United States" or the term "*property* of the United States" were for one instant to be broadened in view of the holding of this Court in *Lake Superior and Mississippi R. R. Co. vs. U. S.*, 93 U. S. 442, where it was stated (p. 454):

> "It might be very convenient for the government to have more rights than it has stipulated for; but we are on a question of construction, and on this question the *usus loquendi* is a far more valuable aid than the inquiry what might be desirable."

As stated also in our Petition for Writ of Certiorari, the term "troops of the United States," back at the time when the legislative grants were made to the railroads, was *primarily* and *historically* understood to mean those *soldiers* necessary to the protection of our frontier country and those persons employed in the construction of the railroads, particularly against hostile Indians. (R. 4)

Reference also is made in our Petition for Writ of Certiorari (R. 9) to the decision of this court in *United States vs. Central Pacific Railroad Company,* 118 U. S. 235, 240, with regard to the provisions of the Act of May 7, 1878, ch. 96, 20 Stat. 56 (Thurman Act) in which it was held that the term 'whole amount of compensation' for transportation for the United States on the bond-aided Central Pacific Railroad, thereby required to be withheld to apply against the indebtedness of that Company, *could not be interpreted to change the provisions* of the prior Act of July 1, 1862, *supra,* p. 18, and as amended by the Act of July 2, 1864, which Act as so amended required that only *one-half* of such compensation should be withheld account of the indebtedness of the Company, **so as to apply to earnings of those parts of roads owned or operated by the bond-aided companies but which were not aided by Government bonds.** The Court therein stated that the construction which had been placed by the ~~decision of the Court of Claims in that case~~ **Government, in the Court below, 21 C. Cls. 180,** would *not only render the provisions for reduced rate transportation,* **in the land-grant acts,** a *"breach of faith on the part of the United States, but*

an invasion of the constitutional rights" of the Company.

In not a single case, that we have examined, has this Court extended, or permitted to be extended, the term "troops of the United States" to other classes than those to whom your petitioner has applied them in its dealings with the United States Government. And your petitioner now only asks that in those cases where *reduced rates* are not required of it by law, or by the agreements of the railroads, the other provisions of the Land-Grant Acts expressly entitling the railroads to *"fair and reasonable rates of compensation, not to exceed the rates paid by private parties for the same kind of service,"* shall be observed by the United States Government.

VI.

MILITARY PRISONERS AND GUARDS traveling in time of peace and not in connection with a MILITARY EXPEDITION should be considered as traveling for the purposes of the prisoners as individuals. Especially is this true when the cost of all such transportation is paid to the railroads at the reduced land-grant rates only, and charged against the prisoners at full tariff rates, thus commercializing the reduced-rate provision of the land-grant acts.

(Reference to Finding VI) (R. 67-69).

In the *Illinois Central Case,* 62 C. Cls. 61, the Court of Claims held that the transportation of *military prisoners and their guards,* en route to a military

prison, was to be regarded as the transportation of "troops of the United States" within the meaning of the railroad Land-Grant Acts, and that case was followed in this case.

In the *Illinois Central case* the facts showed (as they show in this case) that the *prisoners and guards* transported were enlisted men of the United States Army. It further was found, in this case, that, as to *464 such persons* transported, the Transportation Requests were endorsed *"Commanding officer notified of the amount to be charged against soldier."* (Finding V) (R. 67)

was further found in this case that:

> "The *commercial* fares for the transportation of these soldiers and their guards [422 persons] were actually charged by the Government against said soldiers." (Finding VI), (R. 68)

And notwithstanding these Findings the lower court refused to give judgment to Plaintiff.

In the *Illinois Central Case* the Court of Claims held that it was immaterial that such military prisoners and guards were not traveling as part of a moving army, troop, or body of soldiers. We respectfully submit, however, that in order to bring a soldier within the term "troops of the United States," as used in the railroad land-grant Acts, it is not only necessary that he should be an officer or enlisted man of the Regular *Army, Navy or Marine Corps,* but that the railroad transportation involved, certainly in time of peace, must be in connection with the *movement of such troops.* The transportation of a military prisoner from his military station to a military prison

in a distant State, is not properly to be regarded as a *movement of troops of the United States*, that is, of its *soldiers*, within the meaning of the railroad land-grant Acts, but is merely for the purpose of *discipline*, a purpose not in contemplation when the land-grant Acts were passed, and not in any manner covered by their language or intent.

Military prisoners are those officers and men who have been sent to prison for the purpose of undergoing punishment for violations of law or the Army Regulations, to be followed in many instances by their dishonorable discharge from the service. Their transportation to the places designated for their imprisonment has therefore no connection with the *movement of the troops* to which they belong. The fact that in a number of the instances here involved the War Department Transportation Requests bore the endorsement *"Commanding officer notified of the amount to be charged against soldier"* is a recognition on the part of the War Department of the fact that *the transportation involved was not required by any movement of troops, but was individual and personal in character and should be borne by the person.*

The transportation of military prisoners to the places designated for their confinement is akin to the transportation back to his proper station of a furloughed soldier, which was held by the Court of Claims in the *Union Pacific Case*, 52 C. Cls. 226, not to be transportation of the "troops of the United States" within the meaning of the railroad land-grant Acts. In that case the court said (p. 236):

> "* * * By treating the soldiers' travel while on furlough as an individual matter for his own com-

fort and convenience, the Government has recognized that he was not traveling as a soldier or as a part of the 'troops of the United States.'"

Besides as said by this Court (249 U. S. 354), in affirming the decision below in the case just cited (p. 360):

> "*Fourth.* The furloughed soldier is, of course, a part of the Army or troops of the United States; but his transportation back to the proper station, is not 'transportation of troops' within the meaning of the land-grant acts. The furloughed soldier travels for his own purposes. The Government merely advances to him the cost of transportation and subsistence while on furlough; and does this only if the soldier lacks funds to bear the expense himself. The advance must be repaid. Army Regulations, 1913, sec. 110."

It is immaterial whether the cost of the transportation of any of these prisoners and guards was *actually* charged against the soldier, or *actually* collected from them. We refer to the matter merely because the endorsement of such a purpose on the transportation requests shows that the War Department regarded such transportation as *individual and personal* and not related to any military movement, which relation to a military movement, we submit, is necessary in order to make the separate transportation of individual soldiers transportation of "troops of the United States" within the meaning of the railroad land-grant Acts.

For the Government to refuse to pay the railroads full tariff rates as to these Military Prisoners and Guards, certainly raises a grave question, especially

when full tariff rates are collected from the prisoners, and only land-grant rates are paid to the railroads. Whether such shrewdness is to be accomplished, is for this Court to say.

VII.

Members of the OFFICERS' RESERVE CORPS are not "troops of the United States," within the meaning of the land-grant acts, because they are not soldiers when in active service FOR THE MERE PURPOSE OF INSTRUCTION AND TRAINING, and that for not more than fifteen days.

(Reference to Finding VII) (R. 69)

In the *Illinois Central Case,* 62 C. Cls. 61, the Court of Claims held that members of the OFFICERS' RESERVE CORPS, traveling to and from camps of instruction and training under orders of the War Department, were "troops of the United States" within the meaning of that term as used in the railroad land-grant Acts, and followed that conclusion in the *Louisville and Nashville Case,* 62 C. Cls. 154, and has followed it also in the present case. An application for a writ of certiorari was denied by this Court October 18, 1926, in the *Illinois Central Case* (273 U. S. 710). The petition in the present case was filed August 4, 1924.

Your Petitioner is not satisfied with the correctness of the *Illinois Central* decision below, and believes that grave errors have occurred therein that should be corrected by this Court. The fact that this Court denied an application for a writ of certiorari in the *Illinois Central Case* does not, of course,

amount to an affirmance of the judgment therein.

In the *Illinois Central Case* the Court of Claims rested its conclusion on the sole ground that members of the Officers Reserve Corps are a *part of the Military Establishment,* and while in camp for instruction and training they cannot be classed either as *Militia Officers,* or as *National Guard Officers,* or brought within any other classification, and, *therefore,* that Court reasoned, they *must be* "troops of the United States."

The reasoning in that case is so contrary to the principles laid down in other cases, cited herein, that we cannot believe it should be allowed to become a finality. For instance, this Court has held that land-grant deductions are not to be required in respect of *Furloughed Soldiers* and *Stragglers,* yet they, too, are certainly *part of the Military Establishment.* If the decision below be allowed to stand the railroads may look for further untold encroachments from meticulous accounting officers upon the railroad earnings in other respects not now under consideration, and which have been halted only by the past decisions of this Court.

It is respectfully submitted that, in deciding the *Illinois Central Case,* the Court of Claims failed to give due consideration to the fact that, as stated by Mr. Justice Brandeis in delivering the opinion of this Court in the case of the *Union Pacific Railroad Co.,* 249 U. S. 354, 357 (affirming 52 C. Cls. 226):

> "In 1850 the word 'troops' had (and it has ever since had) an established meaning;—namely, 'soldiers collectively,—a body of soldiers.'"

and that the term "soldier," at the time of the passage of the land-grant Acts, meant (and still means) a person whose sole occupation is that of arms, such as an officer or enlisted man of the Regular Army of the United States.

In holding that the term "troops of the United States" as used in the railroad land-grant Acts includes members of the Officers' Reserve Corps, the Court of Claims extended said term, by judicial construction, to a class of persons that did not exist at the time the railroad land-grant Acts were passed and could not have been within their intendment. While it is true that the National Defense Act of June 3, 1916 (39 Stat. 186), as amended by the Act of June 4, 1920 (41 Stat. 759), provides that the Army of the United States, in its broadest sense, shall be held to include the Officers' Reserve Corps, it is submitted that the Officers' Reserve Corps is after all merely an organization of *citizens* engaged primarily in civic occupations—such as doctors, lawyers, bankers and business men—whose only "active service" (so-called) is limited to not exceeding *fifteen days* in any one year,—"except in time of a national emergency expressly declared by Congress," (U. S. Code, p. 183, Title 10, Sec. 369),—during which brief period the Reserve Officers may be ordered to encampments for the purpose of *instruction and training* only, and not for any other purpose whatever. *It was not intended that while there they would be SOLDIERS, but only that they there would LEARN TO BECOME SOLDIERS. Potentiality* only was expected. It is going far beyond the purpose of a fair construction of the term "troops of the United States," as used in the railroad land-grant Acts, to hold that said term

includes, in time of peace, the reserve force of citizens termed the Officers' Reserve Corps. Like the reorganized National Guard of the United States and of the States, members of the Officers' Reserve Corps, in time of peace, are merely *potential* "troops of the United States." The only difference is that, as the Officers' Reserve Corps, the Federal Government is independent in every respect of any State control of its members, while under the National Guard the Federal Government under the Constitution had only a limited control.

The term "Reserve" in itself precludes the possibility of believing that the persons are *actual soldiers,* for the mind immediately grasps the real meaning to be that the members of the Reserve Corps are *held back* for *future use* as *soldiers.* In fact, this is declared in Section 37 of the Act of June 3, 1916, as amended by Section 32 of the Act of June 4, 1920 (National Defense Act), which states:

> "For the purpose of providing *a reserve of officers available for military service when needed* (italics ours) there shall be organized an Officers' Reserve Corps consisting of general officers, of sections corresponding to the various branches of the Regular Army, and of such additional sections as the President may direct. The grades in each section and the number in each grade shall be as the President may prescribe * * *"

Then also with regard to pay and allowances, Section 37a, of the Act of June 3, 1916, as amended by Section 32 of the Act of June 4, 1920, provides that Reserve Officers shall not be entitled to pay and allowances except when on active duty; and with regard to active duty, said Acts provide that,

"Except in time of a national emergency expressly declared by Congress, no reserve officer shall be employed on active duty for more than fifteen days in any calendar year without his own consent."

It appears from the Annual Report of the Secretary of War, 1927 (pp. 173-174), that there were 110,014 members of the Officers' Reserve Corps on June 30, 1927, 8,451 of whom (said report states) were also members of the "federally recognized National Guard." The same report further states (p. 55) that since the date of its reorganization under the provisions of the National Defense Act as revised in 1920, the Reserve Officers' Training Corps has produced approximately 29,500 graduates, the great majority of whom were eligible for eventual commission in the Officers' Reserve Corps. Said report also states (p. 175) that of the officers appointed during the year ending June 30, 1927, 5,018 were Reserve Officers' Training Corps graduates of the school year 1926-27, and 23 were graduates of the "blue course" at the citizens' military training camps held during the summer of 1926, the remainder being variously selected from among enlisted men of the Regular Army, National Guard, and Reserve Corps, National Guard officers, and civilians. The Reserve Officers' Training Corps consists of students at various schools and colleges who have been enrolled in that Corps for military training, under authority of the National Defense Acts, and said Annual Report of the Secretary of War (p. 55) states that at the close of the school year 1926-27 the total enrollment in the Reserve Officers' Training Corps was 108,957, and

(p. 56) that during the summer of 1926 citizens' military training camps were successfully operated in the nine corps areas, including one camp in Porto Rico, with a total enrollment of 34,194.

We call attention to these facts and figures with reference to the Officers' Reserve Corps, the Reserve Officers' Training Corps, and the citizens' military training camps from which sources the Officers' Reserve Corps is largely recruited, for the purpose of showing not only the present large numerical strength of the Officers' Reserve Corps but the even greater proportions which the said corps will probably assume. *It is manifest that in time the Officers' Reserve Corps may include a very large part of the entire citizenship of the country.* To hold that these citizen reserves are "troops of the United States" within the meaning of the railroad land-grant Acts as that term was understood at the time of the passage of those Acts and is still understood, *is to throw a very serious economic burden upon the land-grant railroads and those equalizing therewith, and would enlarge the plain meaning and purpose of the words of those Acts.*

The fact is that the Reserve Corps, both officers and enlisted men, the Naval Reserve Force, and the National Guard, together constitute practically what was embraced in the original Act of May 8, 1792 (1 Stat. 271), known as the Militia Act of 1792, which provided:

> "* * * That each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years (except as is herein after excepted) shall

severally and respectively be enrolled in the militia by the captain or commanding officer of the company, within whose bounds such citizen shall reside, and that within twelve months after the passing of this act." * * *—(Section 1).

It has been held by the Court of Claims that the members of the militia are not "troops of the United States" within the meaning of the land-grant laws (*Ala. Great Southern R. R. Co. v. U. S.*, 49 C. Cls. 522), and it has been likewise held as to the National Guard (*O. W. R. R. & N. Co.*, 60 C. Cls. 458). These decisions are based on the fact that the persons transported did not constitute any part of the *soldiery* of the United States, in time of peace. The fact now remains to be recognized that members of the Reserve Corps, both officers and enlisted men, are also purely a part of the *citizenry* of the United States, and *not* in its *military service*, that is, are not the *soldiery* of the United States so as to constitute them "troops of the United States" within the meaning of the land-grant acts, nor at all, in time of peace.

We also wish to call attention to the fact that the railroad land-grant laws have never been amended, or attempted to be amended, by Congress so as to extend the land-grant transportation privilege to any persons other than "troops of the United States" as that term was understood and used at the time of the passage of those Acts, even if it be assumed that it is within the power of Congress to extend such privilege.

On the other hand, Congress has in instances given relief from the restrictions as to charges for transportation for the United States first placed upon

aided railroads. For instances, Union Pacific Railroad and the Central Pacific Railroad (*supra*, p. 43) and the Southern Pacific Company's line from Roseville, Calif., to East Portland, Ore. (*supra*, p. 17). *Thus Congress has shown there is no intention on its part that the Land-Grant Acts shall be unduly harsh or burdensome.*

It seems to us that these aspects of the matter should be called to the attention of this Court, as it is believed they were not presented to it in the Petition for Writ of Certiorari in the *Illinois Central Case.* For these reasons we respectfully urge a consideration by this Court of the question as to the status of this *reserve military force of citizens* under the Railroad Land-Grant Acts.

In this connection, the Court's attention is invited to what is stated later on in this brief with respect to the status of *Engineer Officers of the War Department traveling for non-military purposes.*

VIII.

NAVY NURSES (female) are not "troops of the United States," because they are not either commissioned or enlisted persons in the Navy establishment, but merely are APPOINTED, and may withdraw at their own volition in time of peace.

(Reference to Finding VIII) (R. 70)

In the *Louisville and Nashville Case,* 62 C. Cls. 154, 157, the Court of Claims, speaking by Judge Hay, who also delivered the opinion in the *Illinois Central Case, supra*), said:

> "The Naval Nurse Corps is a part of the regular Naval Establishment, and its members when being transported for the purposes of the Government must be classified as troops of the United States,"

referring, in this connection, to the Act of May 13, 1908, 35 Stat. 146, establishing the Nurse Corps of the Navy.

The same conclusion was reached by the Court of Claims in its prior decision in the *Illinois Central Railroad Co. Case*, 62 C. Cls. 61, 66, [No. D-348. Decided April 5, 1926.] In the present case the Court below referred to said opinions and stated that it adhered to the views there expressed.

It is manifest that the mere fact that the Naval Nurse Corps is a part of the regular Naval Establishment is not of itself sufficient to make members of the Naval Nurse Corps "troops of the United States" in any proper sense.

In the *Union Pacific Case*, 249 U. S. 354, this Court, in dealing with the case of *applicants for enlistment* in the Army, recognized the fact that no one could be held to be one of the "troops of the United States" unless actually enlisted in the *military service* of the United States, the court saying, in its opinion, that "it is the actual enlistment, the oath of allegiance, that changes the status from a civilian to soldier." The Supreme Court further said, (p. 359) in the same connection:

> "The fact that under the Army Regulations he receives the same rations as an enlisted man, and that he is subject to the same medical attention, does not effect a change of status. And the fact that the transportation is for the purposes of the

> Government in connection with its military establishment is immaterial."

The Act of May 13, 1908, 35 Stat. 146, establishing "The Nurse Corps (female) of the United States Navy," provides that it shall consist of one superintendent, to be *appointed* by the Secretary of the Navy, "whose term of office may be terminated at his discretion, and of as many chief nurses, nurses, and reserve nurses as may be needed: *Provided*, That all nurses in the Nurse Corps shall be *appointed* or removed by the Surgeon General with the approval of the Secretary of the Navy," etc.

Members of the Navy Nurse Corps (female) may withdraw from their employment *at their own volition*, in time of peace.

Navy nurses (female) are merely *employed, not enlisted*, in the Navy. It is inconceivable that a person in such a status can be properly said to be one of the "troops of the United States." Navy nurses (female) are manifestly no more "troops of the United States" than are *civilian clerks* in the Navy Department who travel for purposes of the Government and at Government expense.

As stated by this Court in the *Union Pacific Case, supra*, at p. 359:

> "Workmen in armor plants and civilian clerks in the War Department at Washington, travel for purposes of the Government, but are obviously not 'troops of the United States' within the meaning of the land-grant legislation."

It may be said, in part, of Navy nurses (female) as was said of militiamen, in War Department circular of June 18, 1903 (at page 23), publishing certain

communications from the Chief of the Record and Pension Office [General F. C. Ainsworth, U. S. A.] and the Attorney General (italics ours):

> "The Department holds that there can not be a constructive muster-in of civilians or of State militiamen who are *temporarily employed in a military capacity by the United States, and who may even be armed, clothed, transported, and subsisted by the United States* for brief periods, but who are so employed with the distinct understanding that they are not United States troops, but are merely armed civilians or State troops acting for the time being as auxiliaries to the forces of the United States, and *subject to withdrawal at any time at their own discretion* or upon the order of the governor of the State to which they belong."

In view of the foregoing the holding as to Navy Nurses (female) in the *Louisville & Nashville Case* appears clearly erroneous.

IX.

Engineer officers of the War Department engaged on NON-MILITARY DUTIES, such as River and Harbor improvements, and attendance on meetings of the California Debris Commission, are not being transported as "troops of the United States," within the meaning of the land-grant acts, and their transportation should be considered as if they were civilian employees of the War Department.

(Reference to Finding IX, R. 70-71.)

The Engineer Officers of the War Department, referred to in Finding IX of the Court below, were

all officers of the Engineer Corps of the United States Army, the cost of whose transportation was paid from appropriations of the War Department covering river and harbor works and the California Debris Commission, and they were *traveling for the purposes connected with river and harbor improvement work or to attend meetings of said Commission.*

As stated in our Petition for Writ of Certiorari (R. 8) in this case, the transportation for the purposes mentioned, is entirely in connection with *duties merely civil in their nature.* Such duties are expressly recognized in the Army Appropriation Acts, and in official Army reports, as "NON-MILITARY activities of the War Department," as distinct from Military Activities. See Army Appropriation Act for fiscal year ending June 30, 1930, 45 Stat. 1349. The *Non-Military Activities* of the War Department—Corps of Engineers—covering the California Debris Commission and River and Harbor works are specifically listed on Pages 1374, 1379-1380. Annual Report of Secretary of War 1930, p. 9.

It is clear, therefore, that the transportation of these Engineer Officers of the War Department had no connection with the movement of "troops of the United States," since the duties to which they were assigned were of a *non-military* character and their transportation was *not* for a military purpose.

In the *Union Pacific Case,* 249 U. S. 354, this Court recognized that it was not enough that the person transported be an officer or enlisted man in the Army, to make his transportation that of "troops of the United States" within the meaning of the railroad land-grant Acts, as it held that the transportation of a furloughed soldier back to his proper station was

not transportation of "troops" within the meaning of those Acts.

This Court was also careful, in the *Union Pacific case, supra,* to reserve the question "whether a soldier traveling for the purposes of the Government, but not for any purpose connected with war or the preparation for war, falls within the provisions," referring in this connection to the opinion of the Attorney General reported in 19 Opin. A. G. 572.

In that opinion the Attorney General held that the transportation of an officer in the Engineer Corps of the Army, while traveling in the discharge of duties connected with river and harbor improvements to which he had been assigned, came within the provisions of the Michigan Central Railroad land-grant Act of June 3, 1856, (11 Stat. 21), as amended July 3, 1866, requiring the use of its highway in the transportation of "troops of the United States" free from toll or other charge. But an examination of that opinion shows that the Attorney General was laboring under a misapprehension as to the nature of such a condition in a land-grant act, as in support of his construction he refers to the following principle laid down by this Court in *Slidell v. Grandejean,* 111 U. S. 437:

> "It is also a familiar rule of construction that where a statute operates as a grant of public property to an individual, or the relinquishment of a public interest, and there is a doubt as to the meaning of its terms or as to its general purpose, that construction should be adopted which will support the claim of the Government rather than that of the individual. Nothing can be inferred against the State. As a reason for this rule it

> is often said that such acts are usually drawn by interested parties, and they are presumed to claim all they are entitled to."

The principle thus stated by this Court is applicable, in terms, only to "a grant of public property to an individual, or the relinquishment of a public interest." It has no application to a provision in a railroad land-grant Act by which a *privilege* is exacted of the grantee railroad for the benefit of the United States. Certainly, such a *privilege* is not to be enlarged by doubtful construction, especially where, as here, such enlargement would place an enormous and ever increasing burden upon the grantee.

This question has already been quite fully discussed herein (*supra*, p. 35).

The term "troops of the United States" connotes a body of soldiers, moving collectively, as this Court recognized in the *Union Pacific Case*. That term certainly does not cover, in its ordinary significance, *an individual officer or enlisted man of the Army traveling for purposes which have no relation to the movement of the troops to which he belongs, or which are non-military in their nature.* Notwithstanding the fact that the term "troops of the United States" connotes a *body* of soldiers, moving *collectively*, the land-grant railroads, and the other railroads equalizing therewith, have acquiesced in the application of the land-grant privilege to the transportation of individual officers and enlisted men of the Regular Army, Navy and Marine Corps for *military purposes;* but said railroads have consistently objected to the extension of that privilege to an individual officer or enlisted man traveling for *non-military* purposes.

We submit that the position of the railroads in this connection is well taken. It seems unbelievable that the transportation of an engineer officer of the War Department for the purpose of supervising the construction of engineering works of a civil and purely non-military nature and *so recognized by both the Congress and the War Department,* or for the purpose of attending the meetings of the California Debris Commission—also recognized as a purely civil matter—is to be regarded as transportation of one of the "troops of the United States" within the meaning of the railroad land-grant Acts.

X.

Escorts accompanying the remains of deceased soldiers, in time of peace, move as individuals, and not as Military forces. Therefore, they are not "troops of the United States" under the land-grant acts.

(Reference to Finding X.) (R. 71)

These escorts, it is agreed, were enlisted men of the Army detailed to accompany the remains of deceased soldiers. To justify the land-grant deductions made by the Government on account of such transportation it must be held that such transportation constituted a movement of the "troops of the United States" within the meaning of the railroad land-grant Acts. It is submitted that such transportation does not come within said provisions of the land-grant Acts. Said service is not to be classified as a movement of troops, as prior thereto the deceased had

answered their last roll call. Only their *remains* were being transported.

In this connection it may be interesting to note the following from Comptroller General McCarl's decision November 28, 1921, rendered to the Secretary of the Navy with regard to transportation of a *deceased* enlisted man of the Navy and a civilian attendant (1 Comp. Gen. 288):

> "The Supreme Court of a United States in decision of March 31, 1919, in the case of the *United States v. Union Pacific Railroad Company*, 249 U. S., 354, gave a more limited construction to the term troops of the United States as used in the land-grant acts. In accordance with the principles announced in said decision, the transportation of the bodies of deceased officers and enlisted men can not in any sense be considered troops of the United States, their service as such having been terminated by death. Neither can said remains be considered as property of the United States, for the property right therein vests in the next of kin. The casket and other articles used in the transportation and burial of the body, though furnished by the Government, ceased to be Government property as soon as issued in connection with the deceased, and thereafter can only be considered as subsidiary to the body, the property in which vests with the property in the body. It thus appears that this transportation can not be considered either as transportation of property or troops of the United States and is therefore not subject to the deductions authorized under the land-grant laws for the transportation of property and troops of the United States. The civilian attendant accompanying the remains, not being embraced within the term troops of the United States, the transportation thereof is not subject to deductions under said land-grant laws. Such

decisons of the Comptroller of the Treasury as may be in conflict herewith will not be followed hereafter."

Again we state that there is nothing in the words or purposes of the land-grant Acts to warrant the enlargement of the exactions thereof in the matter of transportation charges so as to include a person, whether a soldier or a civilian, accompanying the *remains* of a soldier, any more than to include in the term "troops and property of the United States" the remains itself, which the Comptroller General himself in said decision admits cannot be done.

It is noted, however, that two of the persons included in this Finding were *civilian attendants,* and that one of the fares charged was for the remains of a *deceased soldier;* and also that for these three fares judgment was awarded for $60.58. (R. 77) This leaves $137.54 still claimed under this Finding. See Analysis. (R. 8)

XI.

Enlisted men changing station, or returning to station, on transportation requests bearing indorsement: "Commanding officer notified of amount to be charged against soldier," are presumed to be traveling for their own purposes, and, therefore, are not "troops of the United States," within the meaning of the land-grant acts.

(Reference to Finding XI.) (R. 71.)

The Transportation Requests covering this transportation were endorsed "changing station" or "re-

turning to station", and on the face of each request was stamped the following endorsement: "*Commanding officer notified of amount to be charged against soldier.*" Plaintiff's efforts to ascertain from the War Department and the General Accounting Office whether any such charges were made or collected were futile.

It is submitted that the carrier had the right to rely on the transportation requests, which bore a notation by the issuing officer of the War Department that the cost of such transportation was to be charged against the soldier. The implication from this notation on the transportation requests is that the transportation requested was not military in its nature, but was a matter personal to the soldier, the expense of which should be borne by him.

It is also submitted that the burden of justifying these land-grant deductions rests upon the Government and not upon the carrier, and that the mere fact that the person transported is an enlisted man of the Army does not of itself justify the Government in making the land-grant deduction (as held by this Court in the *Union Pacific case* in respect to a soldier returning to his military station from furlough), but that it is incumbent upon the Government to show that the person transported comes within the term "troops of the United States" as used in the railroad land-grant Acts. In other words, the affirmative of the issue lies with the Government and not the plaintiff, especially in view of the fact that, according to the endorsement placed by the War Department on these transportation requests, the transportation was NON-MILITARY and *individual* in character.

XII.

An officer of the Medical Reserve Corps, traveling to and from camps of instruction and training, is not one of the "troops of the United States," within the meaning of the land-grant acts, because he is not a soldier when in active service for the mere purpose of instruction and training.

(Reference to Finding XII.) (R. 71-72.)

The several items claimed in the Court below, and which are covered by Finding XII have either been included in judgment awarded below, or claim waived by Plaintiff in proceedings below, *except* one item of $21.16 (shown in Analysis), (R. 9), same being for the transportation on Request No. 3032350 of a Medical Reserve Corps Officer of the Army prior to relief from active duty.

The "active duty" referred to in connection with the transportation of this officer of the Medical Reserve Corps was merely the 15 days training provided for the Officers' Reserve Corps in Section 32 of the Act of June 4, 1920, c. 227, 41 Stat. 776, of which the "Medical Department Reserve" is a part. (See Army Regulations No. 140-5, January 16, 1928, relating to the Officers' Reserve Corps, Sec. I, par. 5, sub-paragraph 14.)

For the reasons stated herein (R. ....) with reference to members of the Officers' Reserve Corps traveling to and from camps of instruction and training, the transportation of the officer of the Medical Reserve Corps covered by transportation request No. 3032350 was not transportation of "troops of the United States" within the meaning of the railroad land-grant Acts.

XIII.

No reference is made herein to Finding XIII (R. 72) covering transportation of "STRANDED ENLISTED MEN", because the small amount claimed therein, $46.42, was included in the judgment amount awarded by the Court below.

XIV.

Additional "percentage deductions" under joint military arrangement.

Not much has been said herein concerning the so-called "percentage deductions" under joint military arrangements. These are of minor importance, and may well be discussed on the merits in the event that this Honorable Court may see fit to grant this Petition for Writ of Certiorari. It might be stated, however, that these "percentage deductions" were applicable only to officers and enlisted men of the *Regular* Army, Navy and Marine Corps, and certain other persons specifically enumerated therein and connected with the movement of said organizations in the field.

CONCLUSION.

In conclusion, we wish to emphasize the fact that, under the decisions of the Court of Claims in the *Alabama Great Southern Case* and of this Court in the *Union Pacific Case,* to constitute the transportation of the members of any military organization that of 'troops of the United States" within the meaning of the railroad land-grant Acts, they must be—

(a) Officers or enlisted men of the Regular Army, Navy or Marine Corps.

(b) In active *military* service.

(c) Subject to the Articles of War of the Army or the Regulations for the Government of the Navy.

(d) Engaged in the performance of a military service, and not being transported for their own convenience (although the United States benefit thereby) such as the transportation of soldiers on furlough or stranded soldiers back to their proper station.

It also appears, from the opinion of this Court in the *Union Pacific Case*—

(1) That the term "troops of the United States," as used in the railroad land-grant Acts, is to be construed in the light of its meaning at the time of the passage of those Acts, and that, so construed, said term includes only the Regular Army, Navy or Marine Corps, *i. e.*, persons whose sole vocation is that of war, or training for war.

(2) That the term "troops of the United States," as used in the railroad land-grant Acts, implies "a body of soldiers, moving collectively;" hence it is not permissible to extend it, by construction, to the movement of an individual soldier, such as a military prisoner being transported to a place designated for his confinement, when such movement is not a part of or in connection with the movement of a body of troops to which he belongs.

(3) The term "troops of the United States," as used in the railroad land-grant Acts, has no application to those who are only "potentially" such troops, such as members of the National Guard or members of the Officers' Reserve Corps.

The language of the transportation *provision in the* Naval Appropriation Acts is also significant as showing that special provision was required to be made for "transportation of enlisted men of the Naval Reserve Force to and from duty," etc., and that their transportation was not included in the term "transportation of enlisted men and apprentice seamen." We particularly would refer to the following provision from Naval Appropriation Act July 1, 1922 (c. 259, 42 Stat. 786, 790) (italics ours):

TRANSPORTATION AND RECRUITING.

For travel allowance of enlisted men discharged on account of expiration of enlistment; transportation of *enlisted men and apprentice seamen* and applicants for enlistment at home and abroad, with subsistence and transfers en route, or cash in lieu thereof; transportation to their homes, if residents of the United States, of enlisted men and apprentice seamen discharged on medical survey, with subsistence and transfers en route, or cash in lieu thereof; transportation of sick or insane enlisted men and apprentice seamen to hospitals, with subsistence and transfers en route, or cash in lieu thereof; transportation of enlisted men of the *Naval Reserve Force* to and from duty, with subsistence and transfers en route, or cash in lieu thereof; apprehension and delivery of *deserters* and *stragglers*, and for railway guides and other expenses incident to transportation; expenses of recruiting for the naval service; rent of rendezvous and expenses of maintaining the same; advertising for and obtaining men and apprentice seamen; actual and necessary expenses in lieu of mileage to officers on duty with traveling recruiting parties; transportation of dependents of enlisted men; * * *.

None of the deduction amounts claimed herein were agreed to, or acquiesced in by your petitioner, but the same were made against its protest.

It will be seen from the provisions in the Army Appropriation Acts under "Transportation of the Army and its Supplies," that the Congress did not understand, in enacting the Army transportation provisions, that the term "troops" would embrace "members of the Officers' Reserve Corps," "Enlisted men of the Enlisted Reserve Corps," etc., for which reason specific provision was added therein so as to include such classes apart from those persons designated as "troops."

We respectfully ask that, for the reasons set forth in our Petition in this case, and for other reasons found herein or that may appear to this Honorable Court, the Writ of Certiorari prayed for may be issued.

Respectfully submitted,

CHARLES H. BATES,
Counsel for Southern Pacific Company,
Petitioner.

November 2, 1931.

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(File No. 36153)

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 339.

SOUTHERN PACIFIC COMPANY, *Petitioner,*

vs.

THE UNITED STATES.

ON A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

BRIEF FOR THE SOUTHERN PACIFIC COMPANY

(On the Merits)

CHARLES H. BATES,
Counsel for Petitioner,
Mills Building,
Washington, D. C.

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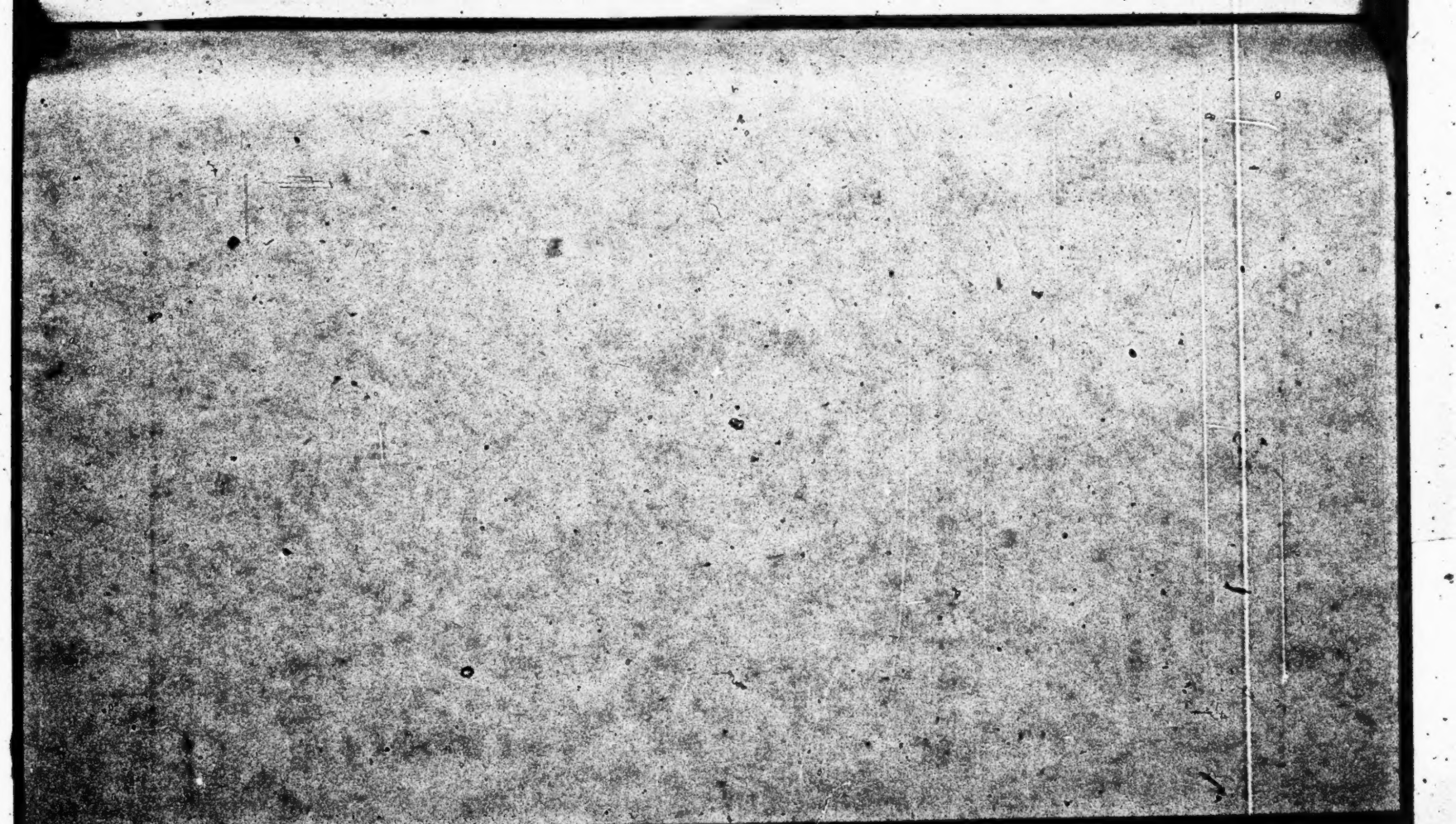

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 339.

SOUTHERN PACIFIC COMPANY, *Petitioner*,

vs.

THE UNITED STATES.

ON A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

BRIEF FOR THE SOUTHERN PACIFIC COMPANY

(On the Merits)

REPORT OF THE OPINION BELOW.

The Opinion of the Court of Claims in this case (R. 72) has not yet been reported, but will probably later appear as 72 C. Cls. 273. The case was No. D-550 in the Court of Claims.

JURISDICTION.

The judgment of the Court of Claims was entered on June 1, 1931. (R. 82.) The petition for writ of certiorari was filed August 31, 1931. (R. 83.) The

petitioner invoked the jurisdiction of this Court under Section 3(b) of the Act of February 13, 1925 (Ch. 229, 43 Stat. 936, 939). A limited writ was granted November 30, 1931, as shown by the following extract from the Order of this Court:

> The petition herein for a writ of certiorari to the Court of Claims is granted, limited to the question raised with respect to Engineer Officers of the War Department in performing duties in time of peace in connection with rivers and harbors improvements and the meetings of the California Debris Commission. * * * (R. 85)

QUESTION PRESENTED.

In view of the limitation placed on the writ of certiorari the question of law involved in this case is only as to whether or not the United States is entitled to so-called "land-grant deductions"—as hereinafter explained—from charges for services performed over "land-grant railroads" in the transportation of *Engineer Officers of the War Department in performing duties in time of peace in connection with rivers and harbors improvements and the meetings of the California Debris Commission.*

Whether or not the United States is entitled to such deductions would depend on whether such persons were, at the time of their transportation, "*troops* of the United States" within a fair, reasonable and just meaning of the reservations and restrictions concerning the transportation of "troops and property of the United States" contained in the several Acts of Congress making grants of lands to certain railroads, and as enforced in the Army Appropriation Acts, and

other acts, under which the transportation in question was authorized.

If it be held that the United States is entitled to "land-grant deductions," when the transportation is over land-grant railroads, then your petitioner would have to acquiesce in deductions of like amounts, as for transportation over land-grant railroads, when the transportation is over non-land-grant railroads which have agreed that the cost thereon would not exceed the cost if the land-grant roads had been traversed, as may be the case in some of the instances involved herein.

Likewise, your petitioner, in such circumstances, would have to acquiesce in the certain so-called "percentage deductions" which were made, and constitute part of the amount claimed in this proceeding, account of certain Military Arrangements between the railroads and the Quartermaster General of the Army in force at the time of the transportation.

It will be necessary, therefore, to discuss herein the question only with regard to the "land-grant deductions."

STATEMENT OF THE CASE.

The transportation involved herein was performed during the years 1920 to 1923, inclusive, by Southern Pacific Company, by itself, or in participation with other carriers. For the most part the pertinent facts, as found by the Court below, are stated in Paragraph IX of its SPECIAL FINDINGS OF FACT, as follows:

IX.

4. Engineer Officers of the War Department on Duty in Connection with River and Harbor

Works and the California Débris Commission.—The persons listed in Exhibit B to the second amended petition under this heading were all officers of the Engineer Corps of the United States Army, the cost of whose transportation was paid from appropriations of the War Department covering river and harbor works and the California Débris Commission, and they were traveling for the purposes connected with river and harbor improvement work or to attend meetings of said commission. The land grant and percentage deductions on these items aggregate $456.77 and $4.36, respectively. (R. 70-71)

THE STATUTES INVOLVED, AND THE DIFFERENT CLASSES OF LAND-GRANT RAILROADS.

There are several classes of land-grant railroads. Four classes will be referred to herein:

The earliest railroad land-grant act—and which we shall therefore refer to as illustrating the *first class* of land-grant railroads—that has come to our attention is that of September 20, 1850 (9 Stat. 466), referred to in this Court's opinion March 31, 1919, in case of *United States vs. Union Pacific R. R. Co.* (249 U. S. 354, 357), under which the *Illinois Central Railroad* and the *Mobile and Ohio Railroad* were constructed. The title thereof and the provisions therein with respect to transportation for the United States are as follows:

> "CHAP. LXI—*An Act granting the Right of Way, and making a Grant of Land to the States of Illinois, Mississippi, and Alabama, in Aid of the Construction of a Railroad from Chicago to Mobile.*
>
> * * * * * * * *

"SEC. 4. *And be it further enacted,* That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid and no other; and the *said railroad and branches shall be and remain a public highway, for the use of the government of the United States, free from toll or other charge upon the transportation of any* PROPERTY OR TROOPS OF THE UNITED STATES. (Italics and capitals ours.)

* * * * * * * 6

"SEC. 6. *And be it further enacted,* That the United States mail shall at all times be transported on the said railroad under the direction of the Post-Office department, at such price as the Congress may by law direct."

Other railroads later were constructed under grants of land carrying like provisions.

None of these railroads received aid in Government bonds.

Under the decision of this Court in *Lake Superior & Mississippi Railroad Co. v. United States,* 93 U. S. 442 (Oct. Term, 1876), these provisions were construed as giving to the United States *free* use of the roadbed as a highway, only, and thereafter companies operating railroads constructed under such provisions were permitted to charge for the use of the rolling stock and for motive power in the transportation of property and troops of the United States at rates equal to fifty percentum of those charged private parties.

What we shall refer to as the *second class* of land-grant railroads are those constructed under Acts containing provisions like those under which the *Atlantic and Pacific Railroad* (*now owned by the At-*

chison, Topeka, and Santa Fe Railway Company), from Isleta, N. M., to Needles, Calif., and the *Southern Pacific Railroad of California*, from Mojave, Calif., to Needles, Calif., (*now owned by the A. T. & S. F. Ry. Co.*); and also the *Southern Pacific Railroad of California*, from Mojave, Calif., via Los Angeles, to Colorado River, opposite Yuma, Ariz., were land aided. The Act referred to was approved July 27, 1866 (14 Stat. 292). The title thereof and the provisions relating to transportation for the United States were as follows:

"CHAP. CCLXXVIII.—*An Act granting Lands to aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast,*

* * * * * * * *

"SEC. 5. *And be it further enacted,* That said Atlantic and Pacific Railroad shall be constructed in a substantial and workmanlike manner, * * * *Provided, That the said company shall not charge the government higher rates than they do individuals for like transportation and telegraphic service.* (Italics ours.)

* * * * * * * *

"SEC. 11. *And be it further enacted,* That said Atlantic and Pacific Railroad, or any part thereof, *shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other government service, and also subject to such regulations as Congress may impose restricting the charges for such government transportation.* Italics ours.)

* * * * * * * *

"SEC. 18. *And be it further enacted,* That the Southern Pacific Railroad, a company incorporated under the laws of the State of Califor-

nia, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

None of these railroads received aid in Government bonds.

A noticeable feature of this class of land-grant railroads is that the Company is expressly permitted to charge the United States *full rates* for transportation and telegraphic service, not to exceed rates paid by private parties, except *only* when Congress may restrict such charges. Restriction has since been imposed, in the Army Appropriation Acts, but *only with respect to transportation of "troops and munitions of war and military supplies and property."* (See Act of July 14, 1892, 29 Stat. 180, and the Army Appropriations Acts from then to the present time.)

In connection with *classes one and two* of land-grant railroads, as herein described, certain pertinent parts from the Army Appropriation Act for the fiscal year ending June 30, 1921, approved June 5, 1920, (41 Stat. 948, 959) are here quoted:

"TRANSPORTATION OF THE ARMY AND ITS SUPPLIES.

"For transportation of the Army and its supplies, including transportation of the TROOPS when moving either by land or water, and of their baggage, including the warrant officers of the Mine Planter Service, members of the officers' reserve corps, enlisted men of the enlisted reserve corps, and retired enlisted men when ordered to active duty, including the cost of packing and crating; for transportation of recruits and recruiting parties, of applicants for enlistment between recruiting stations and recruiting depots; for travel allowance to officers and enlisted men on discharge; for payment of travel allowance as provided in section 126 of the Act approved June 3, 1916, to enlisted men of the National Guard on their discharge from the service of the United States, and to members of the National Guard who have been mustered into the service of the United States, and discharged on account of physical disability; for payment of travel pay to officers of the National Guard on their discharge from the service of the United States, as prescribed in the Act approved March 2, 1901; * * * *for the payment of Army transportation lawfully due such land-grant railroads as have not received aid in Government bonds (to be adjusted in accordance with the decisions of the Supreme Court in cases decided under such land-grant Acts)*[1] (Italics ours), but in no case shall more than 50 per centum of full amount of service be paid; * * * *Provided,* That such compensation shall be computed upon the basis of the tariff or lower special rates for like transportation performed for the public at large, and shall be accepted as in full for all demands for such service: *Provided further,* That in ex-

[1] These are the *class one* land-grant railroads as described herein.

pending the money appropriated by this Act *a railroad company which has not received aid in bonds of the United States and which obtained a grant of public land to aid in the construction of its railroad on conditions that such railroad should be a post route and military road, subject to the use of the United States for postal, military, naval, and other Government services, and also subject to such regulations as Congress may impose restricting the charge for such Government transportation,*[2] (Italics ours) having claims against the United States for *transportation of troops and munitions of war and military supplies and property over such aided railroads,* (Italics ours) shall be paid out of the moneys appropriated by the foregoing provisions only on the basis of such rate for the transportation of such troops and munitions of war and military supplies and property as the Secretary of War shall deem just and reasonable under the foregoing provision, such rate not to exceed 50 per centum of the compensation of such Government transportation as shall at that time be charged to and paid by private parties to any such company for like and similar transportation; and the amount so fixed to be paid shall be accepted as in full for all demands for such service: *Provided further,* That nothing in the preceding provisos shall be construed to prevent the accounting officers of the Government from making full payment to land-grant railroads for transportation of property or persons where the courts of the United States have held that such property or persons do not come within the scope of the deductions provided for in the land-grant Acts: * * *

What we shall refer to as the *third class* of land-grant railroads is illustrated by the *Southern Pacific*

[2] These are the *class two* land-grant railroads as described herein.

Company's line from Roseville Junction, Calif., to East Portland, Ore. This road received its grant of lands under Act of July 25, 1866 (14 Stat. 239). The title thereof and the pertinent provisions relating to Government transportation are as follows:

> "CHAP. CCXLII.—*An Act granting Lands in aid in the Construction of a Railroad and Telegraph Line from the Central Pacific Railroad, in California, to Portland, in Oregon.*
>
> • • • • • • • •
>
> "SEC. 5. *And be it further enacted,* That the grants aforesaid are made upon the condition that the said companies shall keep said railroads and telegraph in repair and use, and shall at all times transport the mails upon said railroad, and transmit despatches by said telegraph line for the government of the United States, when required so to do by any department thereof, and that *the government shall at all times have the preference in the use of said railroad and telegraph therefor at fair and reasonable rates of compensation, not to exceed the rates paid by private parties for the same kind of service.* (Italics ours.) And said railroad shall be and remain a public highway for the use of the government of the United States, free of all toll or other charges upon the transportation of the *property or troops of the United States;* (Italics ours) and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the government of the United States."

It will be observed that this is another class of land-grant railroads which was expressly permitted to charge *full rates* for railroad and telegraph ser-

vice performed for the United States, not to exceed rates paid by private parties, except that it was to transport *free* the "property or troops of the United States." This requirement for *free* transportation of *property or troops of the United States* continued for the period of time down to May 23, 1928, on which day the President approved an Act to the effect that it should be a *"50 per cent railroad,"* as follows (45 Stat. 722):

> "CHAP. 720.—*An Act For the relief of the land-grant railroad operated between the station formerly known as East Portland, in the State of Oregon, and Roseville, in the State of California.*
>
> *"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the land-grant railroad heretofore operated, and now being operated between the station formerly known as East Portland, in the State of Oregon, and Roseville, in the State of California, shall hereafter receive compensation for transportation of property and troops of the United States at the same rate as is paid to land-grant railroads organized under the Land Grant Act of March 3, 1863, and the Act of July 27, 1866 (chapter 278): *Provided,* That the Congress hereby reserves the right at any time by law to prescribe such charges as it deems advisable for such Government transportation."

The land-grant act of March 3, 1863 (12 Stat. 772), therein referred to, was in aid of the Atchison, Topeka and Santa Fe Railway Company's line from Lawrence, Kans., to Humboldt, Kans., and was similar in all essential parts, so far as it relates to Gov-

ernment transportation, to the Act of September 20, 1850 (9 Stat. 466), above, under which the Illinois Central Railroad and the Mobile and Ohio Railroad were aided. The Act of July 27, 1866 (14 Stat. 292), referred to, is the one under which grants of land were made to aid in the construction of the Atlantic and Pacific Railroad (now owned by the Atchison, Topeka and Santa Fe Ry. Co.) from Isleta, N. M., to Needles, Calif.; and the Southern Pacific Railroad of California, from Mojave, Calif., to Needles, Calif. (now owned by the Atchison, Topeka and Santa Fe Ry. Co.); and also, the Southern Pacific Railroad of California, from Mojave, Calif., via Los Angeles to Colorado River, opposite Yuma, Ariz.

It will, therefore, be seen that, under this Act of May 23, 1928, the Congress directed that the Company operating the said railroad should thereafter be paid *50 per centum* of full charges for transportation of *property and troops of the United States,* instead of having to transport same *free.*

This Act is here presented as one of the evidences that *Congress has not sought to increase the burdens of these land-grant provisions, but rather has sought to relieve railroads from the harsh burdens thereof in part at least.*

There is a *fourth class* of land-grant railroads which may be referred to, namely, those which also received *aid in bonds,* from the United States, more commonly referred to as *bond-aided railroads,* or *Pacific Railroads.* This class is illustrated by the *Union Pacific Railroad* and the *Central Pacific Railroad* (the latter now operated by *Southern Pacific Company*). These roads extend from Omaha, Nebr., to San Francisco Bay, Calif. They were constructed

under the Act of July 1, 1862 (12 Stat. 489) as amended by the Act of July 2, 1864 (13 Stat. 356). The title of the Act of July 1, 1862, and its provisions, so far as they relate to transportation for the United States, read as follows:

> "CHAP. CXX.—*An Act to aid in the Construction of a Railroad and Telegraph Line from the Missouri River, to the Pacific Ocean, and to secure to the Government the Use of the same for Postal, Military, and Other Purposes.*
>
> * * * * * * *
>
> "SEC. 6. *And be it further enacted,* That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and *shall at all times transmit despatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the government* (italics ours), whenever required to do so by any department thereof, and that the government shall at all times have the preference in the use of the same for all the purposes aforesaid (*at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service*); (italics ours), and all compensation, for services rendered for the government shall be applied to the payment of said bonds and interest until the whole amount is fully paid. * * *"

(Note: The provision with regard to "all compensation for services rendered for the government" being applied to payment of the bonds, issued to aid these railroads, was changed by the Act of July 2, 1864, so that only *one-half* of such compensation was retained for such purpose.

Later by the Act of May 7, 1878, 20 Stat. 56 (Thurman Act), the remaining one-half of such compensation was to be placed in a Government managed Sinking Fund to be used as a guaranty of final payment of the indebtedness that would become due at maturity of the bonds issued to these companies by the United States. In the "Sinking Fund Cases,"

99 U. S. 700, it was expressly held that the earnings so placed in the Sinking Fund remained the property of the companies, and that the contracts of all the parties under the Act of July 1, 1862, as amended by the Act of July 2, 1864, remained unimpaired.

These references are here made as further evidence that Congress has not sought to increase the burdens of railroads to which it gave aid in their construction.)

These so-called "Pacific Railroads" were not required to suffer any deduction from the amounts of their charges, and it will be observed that they, like the prior two *classes* of land-grant roads described herein, were expressly permitted to charge *full rates* for transportation for the United States the same as private parties.

It is believed that the transportation, out of which the claims herein arose, was all performed over portions of the land-grant Southern Pacific Railroad of California (now part of Southern Pacific Company), a *class two* land-grant railroad as described herein, and over portions of Southern Pacific Company's line from Roseville Junction, Calif., to East Portland, Ore., a *class three* land-grant railroad as described herein.

ARGUMENT.

I.

The term "troops," as used in the Railroad Land-Grant Acts, had an established meaning, namely, "soldiers collectively, a body of soldiers," at the time of enactment thereof.

The expression "troops of the United States" was undoubtedly used in the land-grant acts in its usual and ordinary sense, as signifying "soldiers collectively a—body of soldiers." It might be sufficient in this connection, to cite only this Court's holding in

the case of *United States vs. Union Pacific Railroad Co.*, 249 U. S. 354, where it was stated,

> "In 1850 the word 'troops' had (and it has ever since had) an established meaning:—namely, 'soldiers collectively,—a body of soldiers.'"

This conclusion was reached in the following statement in said decision (pp. 356-358):

> "In defining the transportation rights secured to the United States, these land-grant acts draw a broad distinction between freight and passengers. All 'property' of the Government, whatever its character and intended use, is to be carried 'free of toll or other charge'; but of the many persons in its service, only 'troops'. The history of the legislation shows that both the broad term, 'any property', and the narrower one, 'troops', was adopted deliberately. The earliest land-grant act in which the provision appears is that of September 20, 1850, c. 61, sec. 4, 9 Stat. 466, 467, under which the Illinois Central was constructed. The bill as introduced provided for the free transportation of 'troops and munitions of war'. It was amended so as to read 'any property or troops.' There had been an earlier act granting land to the State of Illinois for the construction of a canal (Act of March 30, 1822, c. 14, 3 Stat. 659) which was amended (Act of March 2, 1833, c. 87, 4 Stat. 662) so as to permit, on the same terms, the use and disposition of the land for railroads. That act provided for the free transportation of 'any property of the United States, or persons in their service.'
>
> *"In 1850 the word 'troops' had (and it has ever since had) an established meaning:—namely, 'soldiers collectively,—a body of soldiers.'*

(Italics ours.) Thus the Army Appropriation Act of that year (Act of September 28, 1850, c. 78, sec. 1, 9 Stat. 504, 506) provides for the 'transportation of the army, including the baggage of the troops when moving either by land or water' and for 'mileage, or the allowance made to officers for the transportation of themselves and baggage when travelling on duty without troops.' The contemporary legislation draws a clear distinction also between troops, that is, *those then having the status of soldiers* (Italics ours), and those who once had been in, or were seeking to enter, the military service. Thus the Army Appropriation Act of March 2, 1847, c. 35, 9 Stat. 149, 151 (which provides in substantially the same terms as that of 1850 for the transportation of troops) makes specific provision for 'forwarding destitute soldiers to their homes', for the 'comfort of discharged soldiers', and for 'expenses of recruiting', which include the cost of transportation. See Army Regulations, 1857, sec. 1321. And the Resolution of March 3, 1847, [No. 7], 9 Stat. 206, authorizes the refund of moneys expended by the States and individuals 'in organizing, subsisting and transporting volunteers previous to their being mustered and received into the service of the United States for the present war, and for subsisting troops in the service of the United States.' In view of the established meaning of the term 'troops' as used by Congress the duty of the court is merely to apply the provisions of the act to the several classes of persons described above."

The title of the Act of March 30, 1822 (C. 14, 3 Stat. 659) referred to in the above quotation, and the pertinent provision thereof, read as follows:

"CHAP. XIV.—*An Act to authorize the state of Illinois to open a canal through the public lands, to connect the Illinois river with Lake Michigan.*

* * * * * * *

"* * * * *Provided also, and it is hereby further enacted and declared,* That the said canal, when completed, shall be, and for ever *remain, a public highway for the use of the government of the United States, free from any toll or other charge whatever, for any property of the United States, or persons in their service,* [Italics ours] passing through the same."

As stated in this Court's opinion, quoted above, this appears to be the first land-grant legislation in aid of any kind of transportation (canal) in the United States, and by its terms, if it had been applied to railroads, would have permitted free use of the highway for *all persons* in the service of the United States. But such a broad requirement never appeared in any railroad legislation. The term was thereafter narrowed down to "troops." And so it was continued through all the years, without any attempt to enlarge the term, or to define it in any manner other than that the persons should be "*troops* of the United States."

In *Dunn v. The People,* 94 Ill. 120, the Supreme Court of Illinois, referring to the word "troops" as used in the provision of the Federal Constitution (Art. I, sec. 10) that "No State shall, without the consent of Congress, * * * keep troops or ships of war in time of peace", said:

> "The word 'troops' conveys to the mind the idea of an armed body of soldiers whose sole occupation is war or service, answering to the regular army."

All the standard dictionaries define the term "troops" in substantially the same way: *i. e.*, as a body of soldiers.

II.

The whole history of all the legislation, under which aid was given by the United States to the land-grant railroads, shows that the term "troops", referred to therein, meant those persons who were either engaged at the time, or who might in the future be engaged, in the ACTUAL MILITARY DEFENSE of the Nation, or of its frontiers.

Some of the incidents going to make up the *history of the times* are here submitted so as to show that what was contemplated in the land-grant legislation was that only *bodies of soldiers in actual defense of the nation and its frontiers* were considered as *troops* back in the days when it was enacted, as indeed also in the present days.

Thus, in "American State Papers—Public Lands" (Vol. VIII, P. 593) will be found an early discussion of the proposed grant of lands to the Illinois Central Railroad Company, from which we quote the following:

> "24th Congress. No. 1498. 1st Session.
>
> "IN FAVOR OF A GRANT OF LAND TO AID IN THE CONSTRUCTION OF THE ILLINOIS CENTRAL RAILROAD.
>
> "Communicated to the House of Representatives, March 31, 1836. Mr. Casey, from the Committee on the Public Lands, to whom was referred the memorial of the Illinois Central Railroad Company, reported:

"That by an act of the legislature of the State of Illinois, approved on the 16th January, 1836, a company was incorporated, and authorized, and empowered, to locate, construct, and finally complete a railroad, commencing at or near the mouth of the Ohio river, in the State of Illinois, thence north to a point on the Illinois river, at or near the termination of the proposed Illinois and Michigan canal, with the right to extend the same to the town of Galena in the said State.

* * * * * * * * *

"When the Mississippi and Ohio are fast bound up in ice, *troops and munitions of war can be transferred with a rapidity and despatch unknown to water transportation,* to the frontiers of Illinois, Wisconsin, and Northern Missouri, whence they can be *stretched along the lines of these frontiers in an incalculably short period of time.*

* * * * * * * * *

"Considered then as a facility of carrying out a system about undergoing the action of Congress for the transportation of the United States mail, it should be regarded in a most favorable light. It is also in contemplation, (and recent experience proves that it is only necessary to conceive a work of internal improvment, to carry it into effect,) to extend the road from the mouth of the Ohio to Nashville, in the State of Tennessee, to meet the projected road from that city to New Orleans, and to unite with branches of the great Charleston project, and the contemplated Baltimore and Ohio, and Richmond railroads.

"The completion of these great works would identify the interests of the whole valley of the Mississippi, and bring the west and the south into the most intimate communion. Viewing this subject in every possible point of light, as cre-

ating at its southern termination, a commercial emporium of great future consequence to the commerce of the western States, at which will concentrate the trade from the sources of the Mississippi and Missouri, the mineral regions of the north and southern Missouri, the manufactures of the Ohio and tributaries, the rich products of the southern country, brought in exchange for the superabundant productions of the rich soils of Illinois, *or as giving value to millions of acres of the public domain, which are now wholly worthless and unsaleable*; or as enhancing the revenues of the State, and contributing to its welfare and prosperity, in the increase of its population, wealth, and intelligence, and in direct and positive benefits to the people, or as *creating great facilities in the conveyance of the mail, the* TRANSPORTATION OF TROOPS AND MUNITIONS OF WAR *from one extreme of the country to another, at all seasons of the year, in one-fourth of the time, and at one-half the expense now required,* or its effects upon the social and political relations of a large portion of the American people, or their public, or their private interests; it operates upon each and all in the most beneficial manner."

Then, on April 10, 1854, Senator Guin, of California, speaking in the United States Senate upon the proposed Pacific Railroad, among other things said, —capitalization ours—(Cong. Globe, Vol. 28, p. 879):

"As a *military road,* it should engage our attention as a means of protection to our citizens between the Mississippi and the Pacific.

* * * * * * * * * *

"The contemplated railway would enable the Government to wield its military power with ex-

traordinary rapidity and economy, and keep in check the dangerous and warlike tribes that roam along the foot of the Rocky Mountains; would reduce the public expenditures for the transportation of TROOPS and military supplies * * *"*

Referring to the purposes for which the Constitution was framed, as stated in its preamble, Senator Guin further said (*id.*):

"The measure before us is one emphatically required at your hands by those significant terms. By accomplishing it, foreign fleets and armies will in vain assail us upon the Pacific or Atlantic. From ocean to ocean this new means of communication will carry our TROOPS and munitions of war, and enable us, by rapidity of overland communications to use the *military power with such celerity as to defy successful invasion from any quarter.* The Commander-in-Chief at Washington could issue his orders and *move his armies* with as much dispatch, from this to the other side of the Continent, as did the great Emperor in the field of his extensive operations during the wars of the First French Revolution * * * In case of war how are you without it to defend California and New Orleans? Where is your Navy by which to accomplish such a purpose? Where are your transports, or how would they reach their destination? How would you carry TROOPS, munitions or supplies over the mountains, and desert that separates the Pacific from the Mississippi?"

III.

Military service, and not military connection or employment with the Army, or the military establishment, is necessary to constitute a person one of the "troops of the United States."

In the *Union Pacific Case* (249 U. S. 354)—so frequently referred to because it was so comprehensive of the principles governing transportation for the United States—the **purpose** of transportation of persons connected with the Army, as individuals, or as groups of individuals, was stated with relation to the several classes of persons therein considered and held *not* to constitute such persons "troops of the United States" within the meaning of the Land-Grant Acts, namely, *Discharged Soldiers; Dicharged Military Prisoners; Rejected Applicants for Enlistment; Accepted Applicants for Enlistment; Retired Soldiers en route to their homes after retirement; and Furloughed Soldiers, that is, enlisted men of the Army on furlough en route back to their proper stations,* even though all these persons were transported, in the first instance at least, at the expense of the United States. This Court said (pp. 356 and 360):

> "None of these persons travelled as part of a moving army, troop, or body of soldiers. That is, they travelled separately as individuals, and (with few exceptions) each on a different day and to widely scattered destinations. Under recent Acts of Congress and Army Regulations, the transportation of persons of some of these classes is paid for by the Government.
>
> * * * * * * * * *
>
> "*Third.* Retired enlisted men en route to their homes after retirement are also not 'troops of

the United States.' They travel for their own purposes. Congress has declared that such retired men shall for certain purposes be deemed a part of the Army * * *; but they may be employed only after Congress has authorized the raising of volunteer forces; and not even then for field duty. * * * The fact that they may thereafter be called into the Army does not make them 'troops of the United States.' Any male citizen may at some time be called into the service. Compare *Alabama Great Southern R. R. Co. v. United States, supra.*"

Fourth. The furloughed soldier is, of course, a part of the Army or troops of the United States; (italics ours) but his transportation back to the proper station, is not "transportation of troops" within the meaning of the land-grant acts. The furloughed soldier travels for his own purposes. The Government merely advances to him the cost of transportation and subsistence while on furlough; and does this, only if the soldier lacks funds to bear the expense himself. The advance must be repaid. Army Regulations, 1913, sec. 110."

It is made clear therein that even though a person transported is actually a *soldier,* and one of the "troops of the United States,"—such as a *retired* soldier, or a *furloughed* soldier,—yet he may *not* be *one of the "troops of the United States," within the purposes of the Land-Grant Acts.*

IV.

Engineer officers of the War Department in performing duties IN TIME OF PEACE in connection with rivers and harbors improvements and the meetings of the California Debris Commission are NOT engaged in military activities, but are engaged in non-military activities.

Congress itself has expressly declared that the activities in which Engineer Officers of the War Department are engaged in rivers and harbors work and in attendance upon meetings of the California Debris Commission are NON-MILITARY, and it would seem to require no argument to establish this point other than to cite the statutes under which Engineer Officers of the War Department perform their duties in connection with such work. We therefore submit that these *duties are merely civil in their nature* as is shown by the various Army Appropriation Acts. We quote particularly the pertinent parts from the Army Appropriation Act for 1930, approved February 28, 1929, as follows:

(45 Stat. 1349, 1374, 1379, 1388)

(Page 1349)

An Act Making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1930, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the military and nonmilitary activities of the War Department for

the fiscal year ending June 30, 1930, and for other purposes, namely:

TITLE I—MILITARY ACTIVITIES AND OTHER EXPENSES OF THE WAR DEPARTMENT INCIDENT THERETO.

* * * * * * * *

(Page 1374)

TITLE II—NONMILITARY ACTIVITIES OF THE WAR DEPARTMENT.

* * * * * * * *

(Page 1379)

CORPS OF ENGINEERS.

* * * * * * * *

CALIFORNIA DEBRIS COMMISSION.

For defraying the expenses of the commission in carrying on the work authorized by the Act approved March 1, 1893 (U. S. C., p. 1086, sec. 661), $15,340.

* * * * * * * *

(Page 1379)

RIVERS AND HARBORS.

To be immediately available and to be expended under the direction of the Secretary of War and the supervision of the Chief of Engineers:

For the preservation and maintenance of existing river and harbor works, and for the prosecution of such projects heretofore authorized as may be most desirable in the interests of commerce and navigation; for survey of northern and northwestern lakes, Lake of the Woods, and other boundary and connecting waters between the said lake and Lake Superior, Lake Champlain, and the natural navigable waters embraced in the

navigation system of the New York canals, including all necessary expenses for preparing, correcting, extending, printing, binding, and issuing charts and bulletins and of investigating lake levels with a view to their regulation; (page 1380) for examinations, surveys, and contingencies of rivers and harbors, provided that no funds shall be expended for any preliminary examination, survey, project, or estimate not authorized by law; and for the prevention of obstructive and injurious deposits within the harbor and adjacent waters of New York City, for pay of inspectors, deputy inspectors, crews, and office force, and for maintenance of patrol fleet and expenses of office, $50,000,000.

For bank protection for the control of floods and the prevention of erosion of the Missouri River at and near the town of Niobrara in the State of Nebraska, $85,000, said work to be carried on under the control and supervision of the Chief of Engineers of the War Department: *Provided,* That the local interests shall contribute two-thirds of the cost of said work.

For bank protection for the control of floods and the prevention of erosion of the Missouri River at and near the town of Yankton in the State of South Dakota, $85,000, said work to be carried on under the control and supervision of the Chief of Engineers of the War Department: *Provided,* That the local interests shall contribute two-thirds of the cost of said work.

That as a contribution in aid from the United States, in view of the unprecedented conditions obtaining in Conway levee district numbered 1, Conway County, Arkansas, in the reconstruction of the levee along the left bank of the Arkansas River in the said Conway levee district numbered 1, as provided under the terms of section 7 of the Flood Control Act, approved May 15, 1928 (45 Stat., p. 537), authority is herby granted to

the Secretary of War, upon the recommendation and approval of the Chief of Engineers, to relocate all or any part of said levee when in the opinion of the Chief of Engineers such relocation shall be deemed practical and feasible: *Provided*, That the total expense occasioned to the United States by reason of the provisions of this paragraph shall not exceed $20,000."

An examination of the provisions quoted above shows the purely civil nature of all the services authorized by Congress in connection with both the rivers and harbors work and the California Debris Commission.

(See also various Annual Reports of the Secretary of War, among others that for 1928, P. 25, *et seq.*, which lists the civil activities of the Corps of Engineers, among others being rivers and harbors work and California Debris Commission; and Annual Report for 1930, P. 9.)

It would, indeed, require a long stretch of the imagination to reach the conclusion that these activities, in the mere keeping open of rivers and harbors for purposes of commerce, are in any sense a military activity, or fulfill a military purpose. If there be any military purpose in this class of work, then we might also say that if Army Engineers were to be detailed to the construction of buildings for the Department of Commerce, they would be engaged in a military duty. And so on with regard to other works that we might conceive that at some time Army Officers might be delegated to perform in times of peace, and, in fact, there is probably nothing in the way of engineering work in the country—highway building, railroad construction, etc.,—that might not in a final analysis

be considered as embracing *an element of military concern.* But surely it is not work that merely embraces "an element of military concern" or that "partakes of a military nature" that is to control in determining a *military duty,* and especially such a military duty as must have been in the minds of the legislators when the privilege was granted by these land-grant railroads to reduced rate transportation for "troops of the United States" back sixty or eighty years ago when the sole thought with regard to such persons was that they might defend our nation against foreign foes *in time of war,* or against *hostile outbreaks of Indians* on our Frontiers.

V.

If there is any doubt or ambiguity in the language of the Land-Grant Acts with regard to the obligation to transport "troops of the United States" at reduced rates of charge, such doubt should be resolved against any broadening of the term, and its meaning should be limited to the ordinary and usual sense in which it was understood at the time of the enactment of the Statutes in which used.

Unfortunately some persons, who have been called upon in years gone by to apply the Land-Grant Acts to transportation for the United States, have been prone to become confused in the rules of interpretation applicable. They had heard of the rule of construction stated by this court in *Slidell v. Grandejean,* 111 U. S. 437, in the following:

> "It is also a familiar rule of construction that where a statute operates as a grant of public

> property to an individual, or the relinquishment of a public interest; and there is a doubt as to the meaning of its terms or as to its general purpose, that construction should be adopted which will support the claim of the Government rather than that of the individual. Nothing can be inferred against the State. As a reason for this rule it is often said that such acts are usually drawn by interested parties, and they are presumed to claim all they are entitled to."

Such persons considered that case as having application to the question of the right of the Government to land-grant reductions. However, the principle thus announced by this Court, as above, is applicable, in terms, only to "a grant of public property to an individual, or the relinquishment of a public interest." Of course, such a rule of construction has no application to a railroad land-grant act by which *a privilege is extended by a grantee railroad for the benefit of the United States.*

We would refer here to the Attorney General's opinion of June 9, 1890, 19 Opin. A. G. 572, as indicating a wrong application of this rule of construction to the very question here considered, of the right of the United States to "land-grant deductions" in the transportation of Officers of the Engineer Corps of the Army while traveling in the discharge of duties connected with rivers and harbors improvements, under provisions of the Michigan Central Railroad land-grant Act of June 3, 1856, 11 Stat. 21, as amended June 3, 1866, requiring the use of its highway in the transportation of "troops of the United States" free from toll or other charge. An examination of that opinion shows that the Attorney General was laboring under the same misapprehension, as mentioned

above, as to the nature of such a condition in the land-grant Act, for he based his reasoning upon the very principle, quoted above, laid down in the case of *Slidell vs. Grandejean* (*supra*), clearly indicating that he had confused a *privilege* extended by a grantee railroad *to* the United States, on the one hand, with a grant of "public property to an individual, or the relinquishment of a public interest," *by* the United States, on the other.

Certainly, such a *privilege* is not to be enlarged by doubtful construction, especially where, as here, such enlargement would place an unnecessary and ever-increasing burden upon the grantee. Rules of interpretation are to be invoked *only where there is doubt or ambiguity.* We respectfully submit that there is no doubt or ambiguity when one looks at the situation broadly, and reads the history of the land-grant railroads, and the decisions of this Court and the opinions of other courts, with the attention merited by the questions involved.

The application of the principle of construction, cited in 19 Opin. O. G. 572 (*supra*), was fruitful of common error on the part of accounting officers of the Government, who, in consequence, made rulings, for instance, that a municipal *policeman*, being transported with a deserter in his charge, was one of the "troops of the United States", within the meaning of the land-grant acts; that a *widow* accompanying the remains of her deceased husband, a Navy Yeoman, was one of the "troops of the United States" (unpublished decision of the Comptroller of the Treasury, April 9, 1910, Appeal No. 18613—Navy Settlement No. 1939, dated February 26, 1910); also that a *woman teacher* at Naval Station, Guam, was a "special laborer" attached to the Naval establishment as

a civilian employee of the Navy, and, therefore, was one of the "troops of the United States" within the *mystical* meaning of the land-grant acts (unpublished decision of the Comptroller of the Treasury, July 30, 1910, Appeal 19091—Navy Settlement No. 3723, dated June 27, 1910); etc., etc.

These erroneous rulings would certainly have very vastly multiplied had it not been for the decision of this Court in the *Union Pacific Case,* 249 U. S. 354; AND WE FEEL WILL AGAIN ARISE AND MULTIPLY IN MANY NEW FORMS IF THE DECISION NOW UNDER CONSIDERATION BE NOT REVERSED.

CONCLUSION.

It is respectfully submitted: (1) that, in view of the history and the wording of the land-grant acts, in order for a person to be one of the "*troops* of the United States," within the meaning of such Acts, he must be, at the time of his transportation, actually engaged in a *military duty,* such as is ordinarily recognized as such; (2) that Congress has expressly declared that when Engineer Officers of the War Department are performing duties in time of peace in connection with rivers and harbors improvements and meetings of the California Debris Commission, they are performing *non-military duties;* (3) that official listings by the War Department of the classes of duties of Army officers, when so engaged, show that they were performing *non-military duties;* and, (4) even if there were not such high authority to evidence that these Army officers were *not* engaged on military duties, we must still consider that they were *not* so

engaged because, by every reasonable test, the duties on which they were engaged were purely *civil duties* and were *such as any trained civil engineer might well perform;* and, further, (5) there is nothing in the decisions of the courts or military authorities, to warrant the belief that the term "troops of the United States," as used in the land-grant acts, ever was intended to include any person not actually engaged as a *soldier,* as that term is commonly understood and was understood sixty or eighty years ago when the land-grant legislation was enacted.

It is further respectfully submitted that the deductions claimed herein were improperly made.

We respectfully ask that the lower Court may be reversed.

Respectfully submitted,

CHARLES H. BATES,

Counsel for Southern Pacific Company, Petitioner.

February, 1932.

FILE COPY

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In the Supreme Court of the United States

OCTOBER TERM, 1931.

No. 339

SOUTHERN PACIFIC COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 72) has not yet been reported.

JURISDICTION

The judgment sought to be reviewed was entered on June 1, 1931. (R. 82.) The petition for certiorari was filed on August 31, 1931. (R. 83.) The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

Whether the following classes of persons, traveling in time of peace on active duty, are "troops of the United States" within the meaning of the laws

giving the Government deductions from the regular transportation charges of land-grant railroads:

1. Military prisoners and guards.
2. Members of the Officers' Reserve Corps.
3. Members of the Nurse Corps of the Navy.
4. Engineer officers of the War Department.
5. Enlisted men escorting remains of deceased soldiers.
6. Enlisted men ordered to new station.
7. Officers of Medical Reserve Corps.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra*, p. 11–12.

STATEMENT

The following is a summary of the facts found by the Court of Claims (R. 64–72):

During 1920 to 1923 the petitioner transported passengers over certain of its railroad lines which had been constructed with the aid of grants of land by the United States. (R. 65.) Under the applicable statutes such land-grant railroads are required to transport troops and property of the United States at not over fifty per centum of the usual rates. (R. 65.) During these years the petitioner transported certain classes of persons upon transportation requests issued by the Government. (R. 66.) In settling its accounts for this transportation the accounting officers of the United States required the petitioner to make certain deductions

from the ordinary commercial fares on the ground that the persons transported were troops of the United States and so entitled to the reduced rates under the land-grant Acts. (P. 11, *infra.*) (R. 66.)

In this suit to recover these deductions the Court of Claims allowed recovery of certain items, holding certain of the persons so transported were not United States troops. There is no question now raised as to the correctness of that recovery. The court denied recovery as to fares paid for the following classes of these persons so transported by the petitioner: Military prisoners and guards, members of the Officers' Reserve Corps, the Nurse Corps of the Navy, and the Medical Reserve Corps, enlisted men changing station and escorting remains of deceased soldiers, and engineer officers of the War Department. All these persons were travelling in peace time and were on active duty. (R. 67–71.)

ARGUMENT

In deciding the instant case the Court of Claims relied upon its previous decisions in *Louisville & Nashville Railroad Co.* v. *United States,* 62 C. Cls. 154, and *Illinois Central Railroad Co.* v. *United States,* 62 C. Cls. 61, certiorari denied 273 U. S. 710. The arguments now advanced by the petitioner were presented to this Court in the application for certiorari in the latter case. Counsel for the petitioner now frankly state that they are "not satisfied with the correctness of the *Illinois Central* decision." (Pet. Brief, p. 48.) Although the cases

differ slightly on their facts, we submit that the decision below was controlled by those cases and that there is no occasion for this Court to review it.

I

MILITARY PRISONERS AND GUARDS

Members of this class of railroad passengers were all enlisted men of the Army, Navy, or Marine Corps. (R. 67.) Some had been convicted of an offense, and all the prisoners were travelling under guard of other enlisted men. None had been discharged from service. The fact that some were prisoners under military guard did not change their status as soldiers or troops of the United States. In some instances the prisoner was charged the cost of his transportation by the Government. This was of no concern to the petitioner, for the prisoners were enlisted men travelling under military orders. This identical point was decided adversely to the petitioner's contentions in both the *Illinois Central Railroad Co.* and *Louisville & Nashville Railroad Co. cases, supra.*

II

MEMBERS OF THE OFFICERS' RESERVE CORPS

Members of this class of passengers were travelling to and from encampments under orders of the Secretary of War. (R. 69.)

The Act of June 4, 1920 (*infra*, p. 12), provides, in part:

> The Army of the United States shall consist of the Regular Army, the National

> Guard while in the service of the United States, and the Organized Reserves, including the Officers' Reserve Corps and the Enlisted Reserve Corps.

This statutory provision is pertinent and controlling as to this class. The identical point was decided adversely to the petitioner's contentions in the *Illinois Central Railroad Co. case, supra.*

III

MEMBERS OF THE NURSE CORPS OF THE NAVY

Members of this class of railroad passengers were traveling on active duty. They were subject to military discipline and to the right of retirement, and were part of a unit of the United States Navy.

The Revenue Act of February 24, 1919, c. 18, 40 Stat. 1057, 1058, provides, in part:

> The term "military or naval forces of the United States" includes the Marine Corps, the Coast Guard, the Army Nurse Corps, Female, and the Navy Nurse Corps, Female, but this shall not be deemed to exclude other units otherwise included within such term.

Although this definition was established for the purposes of a tax act, it indicates the true status of the Nurse Corps as a military unit of the United States Navy.

In *Louisville & Nashville Railroad Company* v. *United States,* 258 U. S. 374, this Court held that the Coast Guard, operating in peace time under the Treasury Department, were not "troops," but

commented as follows upon the other branches of the United States forces:

> The military force of the United States is, and always has been a unit, although divided for purposes of administration into several branches; and there is nothing in the land-grant acts to indicate an intention on the part of Congress to differentiate between the several branches in respect to transportation charges. We are of opinion that the term "troops" is not confined to land forces, and that it includes men and officers in every branch. Since those in the Navy and Marine Corps are to be deemed troops within the meaning of those acts, members of the Coast Guard should also be deemed such when serving as part of the Navy.

The Nurse Corps of the Navy is as much an integral part of the military forces of the country as the other units of the Navy. We submit that its members are troops within the meaning of the land-grant provisions.

The identical point was decided adversely to the petitioner's contentions in *Louisville & Nashville Railroad Co.* v. *United States*, 62 C. Cls. 154, *supra*.

IV

ENGINEER OFFICERS OF THE WAR DEPARTMENT

Members of this class of railroad passengers were all officers of the Engineer Corps of the United

States Army (R. 70.) They were on active duty and were travelling in connection with their official duties in superintending river and harbor improvements. Their appointment was under the act of June 13, 1902, c. 1079, 32 Stat. 372, 373, which provided, in part:

> That there shall be organized in the Office of the Chief of Engineers, United States Army, by detail from time to time from the Corps of Engineers, a board of five engineer officers, whose duties shall be fixed by the Chief of Engineers, and to whom shall be referred * * * projects for works of river and harbor improvement * * *.

These officers were so detailed and were carrying out their official duties. That such officers of the Engineer Corps were "troops of the United States" within the land-grant provisions was specifically decided in 18 Opinions of Attorney General, 572.

V

ENLISTED MEN INCLUDING REMAINS OF DECEASED SOLDIERS

Members of this class were all enlisted men. They were travelling under military orders on military duty. The petitioner in discussing this class of passengers at pages 62-64 of its Brief in Support confuses the issue by arguing that the deceased enlisted men whose remains were being escorted

should not be considered "troops." This is beside the point. It is found as a fact (R. 71) that—

> "full commercial rates were paid by the Government for the transportation of the persons which they were escorting."

The only issue is in regard to the fare of the enlisted men composing the military escort. It seems clear that these soldiers did not cease to be "troops" merely because of the nature of this peculiar duty imposed upon them.

VI

ENLISTED MEN ORDERED TO NEW STATIONS

These passengers were soldiers. They were enlisted men on active duty. The petitioner would not have disputed their status as "troops of the United States" except for the fact that their transportation requests were indorsed "Commanding officer notified of amount to be charged against soldier." We submit that this indorsement is immaterial. It is a matter between the soldier and the Government. There is no evidence that the fare was so charged to the soldier. If he had been so charged, he would not have ceased to be an enlisted man under military orders. In considering these land-grant statutes, this Court recently stated in *United States v. Galveston, Harrisburg & San Antonio Railway Co.*, 279 U. S. 401, 404:

> The right of the United States to have the concessions and allowances in respect of transportation made by the carriers in con-

sideration of the aid given is a continuing one. It is of great value to the Government and of course correspondingly burdensome to the carriers. The terms of the obligation are to be sensibly and fairly read according to the words employed and not expanded or restricted by construction.

We submit that enlisted men changing station or returning to station are "troops" within the ordinary meaning of the word. They were "troops" at one station, and will be "troops" upon arrival at the new station. It would require a strained construction of the land-grant provisions to hold that their status changed merely because they were being transported to or from their post of duty.

VII

OFFICER OF MEDICAL RESERVE CORPS

This passenger was being transported prior to his relief from active duty. (R. 72.) The petitioner in its Brief in Support (page 66) classes this officer for the purposes of its argument with the other members of the Officers' Reserve Corps. This we believe to be correct. The status of the various Reserve Corps should be the same. For the reasons set out in point II of this Brief, we submit that the decision below in regard to this officer was correct.

CONCLUSION

The decision of the Court of Claims follows the most applicable decisions of this Court and its own

prior decisions. There is no authority to the contrary. While the questions involved are recurring and of importance to the parties, we submit that they have already been adequately considered and correctly decided. There is no occasion for a further review by this Court. The petition should be denied.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
CHARLES B. RUGG,
Assistant Attorney General.
CLAUDE R. BRANCH,
Special Assistant to the Attorney General.
LOUIS R. MEHLINGER,
BRADLEY B. GILMAN,
WILLIAM H. RILEY, Jr.,
Attorneys.

NOVEMBER, 1931.

APPENDIX

STATUTES INVOLVED

Each of the Acts of Congress granting aid in the construction of the petitioner's railroads contained the following provisions:

> * * * And said railroad shall be and remain a public highway for the use of the government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the government of the United States. (Sec. 5, Act of July 25, 1866, c. 242, 14 Stat. 240, 241.)
>
> That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other government service, and also subject to such regulations as Congress may impose restricting the charges for such government transportation. (Sec. 11, Act of July 27, 1866, c. 278, 14 Stat. 297.)

The Act of June 3, 1916 (c. 134, 39 Stat. 166), making further and more effectual provisions for the national defense, is as follows:

> SEC. 1. The Army of the United States shall consist of the Regular Army, the Volunteer Army, the Officers' Reserve Corps,

the Enlisted Reserve Corps, the National Guard while in the service of the United States, and such other land forces as are now or may hereafter be authorized by law.

The Act of June 4, 1920 (c. 227, 41 Stat. 759), amending the National Defense Act of June 3, 1916, contains the following provisions:

SECTION 1. That the Army of the United States shall consist of the Regular Army, the National Guard while in the service of the United States, and the Organized Reserves, including the Officers' Reserve Corps and the Enlisted Reserve Corps.

The Act of May 13, 1908 (c. 166, 35 Stat. 127, 146), making appropriations for the naval service for the fiscal year ending June 30, 1909, and for other purposes, provided as follows:

The Nurse Corps (female) of the United States Navy is hereby established, and shall consist of one superintendent, to be appointed by the Secretary of the Navy, who shall be a graduate of a hospital training school having a course of instruction of not less than two years, whose term of office may be terminated at his discretion, and of as many chief nurses, nurses, and reserve nurses as may be needed.

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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 339

SOUTHERN PACIFIC COMPANY, PETITIONER

v.

THE UNITED STATES

ON A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Claims (R. 72–82) is not yet reported.

JURISDICTION

The Court of Claims entered judgment in favor of the petitioner on June 10, 1929. (R. 72.) On August 9, 1929, respondent filed a motion for a new trial and on November 4, 1929, the court entered an order allowing the motion and remanding the case to the general docket with leave to take further testimony. (R. 72, 73.) The final judgment of the Court of Claims was entered on June 1, 1931.

(R. 82.) The petition for a writ of certiorari was filed August 31, 1931 (R. 83), and a limited writ was granted on November 30, 1931. (R. 85.) The jurisdiction of this Court rests on Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

The writ of certiorari granted by this Court was limited—

> to the question raised with respect to Engineer Officers of the War Department in performing duties in time of peace in connection with rivers and harbors improvements and the meetings of the California Débris Commission.

The question presented is whether such engineer officers are "troops of the United States" within the meaning of the laws giving the Government deductions from the regular transportation charges of land-grant railroads.

STATUTES INVOLVED

The statutes involved are set forth in Appendix A, *infra*, pp. 14–16.

STATEMENT

The following is a summary of such of the facts found by the Court of Claims as are relevant to the questions now presented:

During the years 1920 to 1923 the petitioner transported over certain of its railroad lines officers of the Engineer Corps of the United States

Army, who were traveling in connection with improvement work on rivers and harbors or to attend meetings of the California Débris Commission. (R. 66, 70, 71.) The cost of such transportation was paid from appropriations of the War Department covering river and harbor works and the California Débris Commission. (R. 70.)

The statutes granting aid in the construction of the petitioner's railroad lines and statutes regulating the expenditure for Army transportation over land-grant railroads provide that such railroads shall transport troops of the United States at not exceeding fifty per cent of the rates paid by private parties for the same kind of service. (R. 65.).

At all times pertinent to this suit the petitioner was also a party to certain equalization agreements which provided that, with respect to such lines or portions of lines as were not subject to the land-grant deductions, the petitioner would accept for the transportation of persons for whom the Government was lawfully entitled to reduced fares over land-grant roads, the lowest net fare as derived through deductions on account of land-grant distance from the lawful fare or charge. (R. 65.) In other words, those agreements provided substantially for transportation at land-grant rates over nonland-grant roads. Extracts from a typical example of such an agreement are printed in Appendix B, pp. 19–20, *infra*.

The petitioner was also a party to certain agreements with the Quartermaster General of the Army, known as Joint Military Arrangements, whereby it agreed to certain deductions in addition to land-grant deductions for the transportation of officers and enlisted men of the United States Army, Navy, and Marine Corps where the cost of transportation was paid by the Government. (R. 65, 66.) Extracts from such agreements are printed in Appendix B, pp. 19–20, *infra*.

In settling the petitioner's accounts for transportation of engineer officers engaged in the duties above specified during the years 1920 to 1923, or in adjusting accounts of the petitioner previously settled, the disbursing or accounting officers of the Government made certain deductions from the regular commercial fare on the ground that the land-grant Acts, the Equalization Agreements, and the Joint Military Arrangements were applicable. The petitioner accepted payment at the reduced rates under protest (R. 66), and sued to recover the difference.

SUMMARY OF ARGUMENT

Officers and enlisted men of the Army traveling on official duty are "troops of the United States" within the meaning of the land-grant Acts regardless of whether they are traveling individually or as part of a moving army or body of soldiers. Land-grant rates are applicable to their transportation whenever their travel is in connection with their

official duties, regardless of whether those duties are strictly military in their nature. Engineer officers do not lose their military status when assigned to duties relating to public improvements. They continue to be a part of the troops of the United States, and are, therefore, entitled to transportation at the reduced rates provided by the land-grant Acts.

Even if it should be considered that officers and enlisted men of the Army are troops only when engaged in military activities, we submit that the improvement of rivers and harbors and the work of the California Débris Commission partake of a military character. The duty of supervising public improvements of this kind is assigned by Congress to the War Department and constitutes a major part of the duties of the Engineer Corps. It furnishes in peace time a means for developing and maintaining their efficiency which is essential in time of war. Moreover, the improvement of navigable waters is necessary to the national defense, since such waterways constitute important means for the transportation of troops and supplies.

ARGUMENT

The Acts granting aid in the construction of the petitioner's railroad lines (*infra*, p. 14) provided that the railroad should be a public highway for the use of the Government "free of all toll or other charges upon the transportation of the property or troops of the United States." Such Acts have

been construed as securing to the Government only the free use of the roadbed as a highway. *Lake Superior & Mississippi R. R. Co.* v. *United States*, 93 U. S. 442. The various Army appropriation Acts provide for payment for the service performed in transporting property and troops of the United States over land-grant roads at rates not to exceed fifty per cent of the rates charged private parties. See *United States* v. *Union Pacific Railroad Company*, 249 U. S. 354, 355, footnote 1, and Army appropriation Acts cited in Appendix A, *infra*, p. 14.

We submit that members of the military forces of the United Sates traveling on official business are "troops" within the meaning of the land-grant Acts, regardless of the precise nature of the duty to which they are assigned. The petitioner contends that engineer officers of the Army traveling in connection with the improvement of rivers and harbors and the work of the California Débris Commission are not "troops" within the meaning of these Acts.

In support of its contention the petitioner urges first, that since this Court said in the *Union Pacific* case, *supra*, p. 357, that the word "troops" means "soldiers collectively,—a body of soldiers," it follows that transportation of troops connotes the movement of soldiers collectively or in a body. This argument claims too much, for its logical result is that the land-grant roads would not be required to transport at reduced rates soldiers who

are traveling individually and apart from the units to which they are attached.

The *Union Pacific* case presented the question whether or not certain classes of persons were entitled to transportation at land-grant rates. The specific question to which the Court directed its attention in each instance was not whether these persons were traveling individually or in a body, but whether their status was that of soldiers when the transportation was furnished. It was held that this depended upon (1) whether they were members of the military forces of the United States, and (2) whether they were traveling in a public or a private capacity. Thus the Court recognized that the soldier on furlough is "a part of the Army or troops of the United States," but concluded that his transportation back to his station is not "transportation of troops" because he is traveling for his own purposes rather than for the purposes of the Government. At the conclusion of its opinion, this Court said (p. 360–361):

> We have no occasion to consider whether * * * a soldier travelling for the purposes of the Government, but not for any purpose connected with war or the preparation for war, falls within the provisions * * *.

Since the decision in the *Union Pacific* case the Court of Claims has held that the application of land-grant rates is not limited to soldiers traveling as part of a detachment or moving body of men.

Illinois Central Railroad v. *United States*, 62 C. Cls. 61, certiorari denied, 273 U. S. 710; *Chicago, Rock Island & Pacific Ry. Co.* v. *United States*, 58 C. Cls. 33. Moreover, in a number of cases the Court of Claims has sustained land-grant deductions without inquiring whether the persons concerned were traveling individually or as part of a moving army.

The petitioner concedes (Br. p. 61) that the land-grant roads have acquiesced in the application of the land-grant privilege to the transportation of individual officers and enlisted men provided that the travel is for strictly military purposes. We take the position that soldiers traveling on official duty are "troops," regardless of whether they are engaged in strictly military duties or in the performance of other duties authorized by law and assigned to the particular branch of the military establishment of which they are a component part.

Engineer officers do not cease to be members of the military forces or "troops" of the United States when they are assigned to duty in connection with the improvement of rivers and harbors or the work of the California Débris Commission. They remain under military discipline, and are subject to the orders of their superiors. The work upon which they are engaged is a part of their duty as members of that branch of the military establishment to which they are attached, and when traveling in connection with such duty, they are traveling for official purposes.

It appears to have been the uniform departmental practice to construe the land-grant Acts as applicable to transportation of officers and enlisted men of the Army when traveling on official business of any kind. Thus, it has been ruled that the Government is entitled to land-grant rates for the transportation of enlisted men, subpœnaed as witnesses before a United States District Court, even though the cost of transportation is paid out of an appropriation for the Department of Justice. 22 Comp. Dec. 242.

The precise question here involved was submitted to the Attorney General for an opinion in 1890, when the Michigan Central Railroad refused to grant free transportation to an officer of the Engineer Corps, engaged in rivers and harbors works, on the ground that he was not a part of the troops of the United States. The Attorney General ruled that any members of the Army traveling upon Government business must be transported at land-grant rates. 19 Ops. Atty. Gen. 572.

A similar question has arisen on several occasions in connection with the allowance to Army officers of traveling expenses. Engineer officers traveling in connection with work relating to public improvements are entitled to receive a mileage allowance as are other officers of the Army. An amendment to the Act creating the California Débris Commission (*infra*, p. 16) contains a specific provision with respect to the mileage allowance to which officers engaged in the work of that Commission are entitled. Section 15 of the Act

of September 19, 1890, c. 907, 26 Stat. 426, 456, provided that in determining the mileage to be allowed engineer officers, no deduction should be made for travel over land-grant railroads. This was an exception to the general rule providing that a certain sum per mile should be deducted from the mileage allowance of officers when traveling over land-grant or bond-aided railroads. The Comptroller of the Treasury held in 18 Comp. Dec. 168 that the Act of 1890 was repealed by later general Acts relating to mileage.[1]

If the deduction from mileage allowance is applicable to engineer officers traveling in connection with public improvements, when the travel is over land-grant roads, it must be for the reason that such officers are considered to be entitled to transportation at land-grant rates. The opinions of the Comptroller of the Treasury show that such a deduction has been made for many years. 4 Comp. Dec. 711; 18 Comp. Dec. 168.

Even if it be considered that officers and enlisted men are not troops unless they are traveling for military purposes, we submit that the activities of the Engineer Corps in connection with public improvements partake of a military character. The Court of Claims said in its opinion (R. 76):

---

[1] See Act of March 15, 1898, c. 69, 30 Stat. 318, 321; Act of May 26, 1900, c. 586, 31 Stat. 205, 210; Act of June 12, 1906, c. 3078, 34 Stat. 246, 247; Act of June 10, 1922, c. 212, 42 Stat. 631.

> The transportation of troops in war time is of vital concern, and the very fact that Congress creates permanent commissions composed exclusively of engineer officers of the Army indicates a conception of the necessity of entrusting the supervision of the improvement of rivers and harbors to the military department of the Government. While it may be said that the primary purpose of the improvement of rivers and harbors has to do with interstate and foreign commerce, this fact does not exclude the additional vital interest of the Government in times of war, and unless it may be said that the officer's travel must be confined exclusively to military duty, the plaintiff's insistence seems to us untenable. The Panama Canal is not alone a commercial artery of inestimable value; its military significance is recognized.

It has long been the practice of Congress to delegate to the War Department powers relating to the improvement of navigable waters.[2] This practice doubtless arose by reason of the fact that for many years the Army was the only establishment of the Government which had a trained corps of engineers. Moreover, as the Court of Claims observed, the improvement of navigable waters bears a close relation to the national defense, and it is therefore highly appropriate that such work should be within the jurisdiction of the War Department.

---

[2] A compilation of laws relating to rivers and harbors from August 11, 1790, to March 4, 1913, will be found in House Document 1491, 62d Cong., 3d Sess.

Petitioner relies strongly on the fact that in certain recent appropriation Acts, such as the Act of February 28, 1929, c. 366, 45 Stat. 1349, 1379, the work of the Corps of Engineers in connection with river and harbor improvements and the California Débris Commission is listed among the "Non-Military Activities of the War Department." We question whether this classification is of any particular significance in relation to the issue presented in the instant case. Thus it will be observed that the same appropriation Act (45 Stat. 1357) lists the transportation of recruits under the military activities of the War Department, but this Court held in the *Union Pacific* case that recruits are not troops and therefore not military persons.

It is well recognized that the peace-time activities of the Engineer Corps have a military purpose, in addition to that mentioned by the Court of Claims, in that they provide practical experience which would not otherwise be available. (See letter of the Secretary of War, Appendix C, *infra*, pp. 21–25.) In the absence of such an opportunity for practical training it would be impossible for Army engineers to maintain that high standard of efficiency which is essential in time of war.

In the foregoing discussion we have considered only the status of engineer officers engaged in duties relating to public improvements in connection with the rates to which the Government is entitled under

the land-grant Acts. The case also involves the applicability to such officers of the rates specified in certain land-grant equalization agreements and joint military arrangements to which the petitioner was a party.

The equalization agreements (*infra*, p. 19) in terms apply to persons for whom the United States is entitled to reduced fares over land-grant roads. The joint military arrangements (*infra*, p. 20) provide for additional deductions from the commercial rates in the case of certain specified classes of persons, including officers and enlisted men of the Army, Navy, and Marine Corps. These arrangements have been generally construed as applying to the same classes of persons to whom the land-grant rates would be applicable, and both the petitioner and the Court of Claims have so treated them.

CONCLUSION

The judgment of the Court of Claims should be affirmed.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
CHARLES B. RUGG,
Assistant Attorney General.
CLAUDE R. BRANCH,
Special Assistant to the Attorney General.
H. BRIAN HOLLAND,
Attorney.

FEBRUARY, 1932.

APPENDIX A

STATUTES INVOLVED

Each of the Acts of Congress granting aid in the construction of the petitioner's railroads contained the following provisions:

> * * * And said railroad shall be and remain a public highway for the use of the government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the government of the United States. (Sec. 5, Act of July 25, 1866, c. 242, 14 Stat. 240, 241.)
>
> That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other government service, and also subject to such regulations as Congress may impose restricting the charges for such government transportation. (Sec. 11, Act of July 27, 1866, c. 278, 14 Stat. 297.)

The Army Appropriation Act of June 5, 1920, c. 240, 41 Stat. 948, 959–960, provides in part as follows:

> For transportation of the Army and its supplies, including transportation of the troops when moving either by land or water, and of their baggage, including the warrant officers of the Mine Planter Service, mem-

bers of the Officers' Reserve Corps, enlisted men of the Enlisted Reserve Corps, and retired enlisted men when ordered to active duty, including the cost of packing and crating; for transportation of recruits and recruiting parties, of applicants for enlistment between recruiting stations and recruiting depots; for travel allowance to officers and enlisted men on discharge; * * * for the payment of Army transportation lawfully due such land-grant railroads as have not received aid in Government bonds (to be adjusted in accordance with the decisions of the Supreme Court in cases decided under such land-grant Acts), but in no case shall more than 50 per centum of full amount of service be paid; * * * *Provided,* That such compensation shall be computed upon the basis of the tariff or lower special rates for like transportation performed for the public at large, and shall be accepted as in full for all demands for such service: *Provided further,* That in expending the money appropriated by this Act a railroad company which has not received aid in bonds of the United States and which obtained a grant of public land to aid in the construction of its railroad on conditions that such railroad should be a post route and military road, subject to the use of the United States for postal, military, naval, and other Government services, and also subject to such regulations as Congress may impose restricting the charge for such Government transportation, having claims against the United States for transportation of troops and munitions of war and military supplies and property over such aided railroads, shall be paid out of the moneys appropriated by the foregoing provisions only on the basis of such

> rate for the transportation of such troops and munitions of war and military supplies and property as the Secretary of War shall deem just and reasonable under the foregoing provision, such rate not to exceed 50 per centum of the compensation of such Government transportation as shall at that time be charged to and paid by private parties to any such company for like and similar transportation; and the amount so fixed to be paid shall be accepted as in full for all demands for such service: *Provided further*, That nothing in the preceding provisos shall be construed to prevent the accounting officers of the Government from making full payment to land-grant railroads for transportation of property or persons where the courts of the United States have held that such property or persons do not come within the scope of the deductions provided for in the land-grant Acts: * * *.

The Act of June 30, 1921, c. 33, 42 Stat. 68, 79–80; the Act of June 30, 1922, c. 253, 42 Stat. 716, 729–730; and the Act of March 2, 1923, c. 178, 42 Stat. 1377, 1389–1390, contain similar provisions relating to appropriations for the transportation of the Army and its supplies.

The Act of March 1, 1893, c. 183, 27 Stat. 507, creating the California Débris Commission, provides in part as follows:

> * * * That a commission is hereby created, to be known as the California Débris Commission, consisting of three members. The President of the United States shall, by and with the advice and consent of the Senate, appoint the commission from officers of the Corps of Engineers, United States Army. Vacancies occurring therein

shall be filled in like manner. It shall have the authority, and exercise the powers hereinafter set forth, under the supervision of the Chief of Engineers and direction of the Secretary of War.

* * * * *

SEC. 3. That the jurisdiction of said commission, in so far as the same affects mining carried on by the hydraulic process, shall extend to all such mining in the territory drained by the Sacramento and San Joaquin river systems in the State of California. * * *

SEC. 4. That it shall be the duty of said commission to mature and adopt such plan or plans, from examinations and surveys already made and from such additional examinations and surveys as it may deem necessary, as will improve the navigability of all the rivers comprising said systems, deepen their channels, and protect their banks. Such plan or plans shall be matured with a view of making the same effective as against the encroachment of and damage from débris resulting from mining operations, natural erosion, or other causes, with a view of restoring, as near as practicable and the necessities of commerce and navigation demand, the navigability of said rivers to the condition existing in eighteen hundred and sixty, and permitting mining by the hydraulic process, as the term is understood in said state, to be carried on, provided the same can be accomplished, without injury to the navigability of said rivers or the lands adjacent thereto.

* * * * *

The Act of June 6, 1900, c. 791, 31 Stat. 588, 631, reads in part as follows:.

* * * *Provided,* That so much of the Act of March third, eighteen hundred and ninety-nine, as provides that the members of the California Débris Commission shall receive only actual expenses in lieu of mileage while traveling on duty is hereby repealed, and hereafter the officers of the commission shall receive the mileage allowed by law.

APPENDIX B

EQUALIZATION AGREEMENT AND JOINT MILITARY ARRANGEMENTS

The Joint Military Equalization Agreement No. 1, effective January 1, 1921, to which petitioner was a party, and which is typical of the agreements entered into from time to time between the Government and various railroad companies, provided in part as follows:

> For transportation of persons for whom the United States is lawfully entitled to reduced fares or charges over land-grant roads, when movement is made under United States requests for transportation of the issue of the War Department, Navy Department or Marine Corps, the carriers whose names are signed hereto, hereby agree * * * to accept the lowest net fare or charge and the lowest net excess baggage rate lawfully available, as derived through deductions account land-grant distance, from the lawful fare or charge from point of origin to destination in effect via a route that is recognized as a usually traveled route for military traffic at time of movement.

The Interterritorial Military Arrangement, effective January 1, 1917, to which petitioner was a party, provided for a deduction of five per cent from the commercial fares, in addition to land-grant deductions for the transportation of—

> officers and enlisted men and others connected with the United States Army, United

> States Navy, and United States Marine Corps, for whom the United States Government is lawfully entitled thereto and when traveling on transportation requests of the issues of the United States Army, United States Navy, and the United States Marine Corps, and at United States Government expense only.

The Joint Military Arrangement No. 1, effective January 1, 1921, to which petitioner was a party, provided for a deduction of three per cent from the commercial fares in addition to land-grant deductions for transportation of—

> commissioned officers, warrant officers, field clerks, nurses, and enlisted men of the United States Army, and commissioned officers, warrant officers, and enlisted men of the United States Navy and United States Marine Corps for whom the Government is lawfully entitled thereto when traveling on transportation requests of the issues of the United States War Department, United States Navy Department, and United States Marine Corps, where the entire transportation cost is paid by the United States Army, United States Navy, or United States Marine Corps, as the case may be. * * *

APPENDIX C

EXTRACTS FROM LETTER OF THE SECRETARY OF WAR

The following are extracts from a letter addressed by the Secretary of War to a member of the House of Representatives with reference to a proposed bill providing for the transfer to the Department of the Interior of duties at present performed by the War Department. We have omitted for the sake of brevity such portions of the letter as have no relation to the question presented in the instant case.

Honorable WILLIAM WILLIAMSON,
HOUSE OF REPRESENTATIVES,
Washington, D. C.

DEAR MR. WILLIAMSON: In reply to your letter of January 13, 1928, asking for criticism or suggestion on H. R. 8127, 70th Congress, 1st Session, "A bill to provide for the transfer to the Department of the Interior of the public works functions of the Federal Government," I submit the following:

I am not in favor of the passage of such a bill because it is opposed to the best interests of the United States from the standpoint of administrative or technical efficiency, economy, and national defense. This bill aims to transfer the work of River and Harbor Improvement and other civil works from the War Department to the Department of the Interior. * * *

* * * * * *

* * * As a substitute for the existing arrangement, it is proposed in pending legislation that members of the Corps of Engineers be detailed for limited periods under the Department of the Interior on nonmilitary duties pertaining to the civil functions of the enlarged Department of the Interior. Such an arrangement would be unworkable. An idea persists that the requisite skill in the conduct of public works can be readily acquired, and that officers temporarily detailed under the above proposal to such duties could be placed in positions in which they would be usefully employed, with advantages to the work and to their professional education. Such is not the case. Responsibility for important and specialized work can not be entrusted to officers on temporary duty, over whom the chief of the service has no permanent control. Officers now are carefully selected for the positions they are to fill. It is hardly probable that the Department of Public Works would or could give any real responsibility to officers detailed temporarily; without such actual charge of the work, and the responsibility that goes with it, a temporary connection with the work or a mere tour of observation would be of minor value in the training and instruction of the officers. To the younger officers some value might accrue. In reality the older officers of the Corps of Engineers would soon be wholly separated from the execution of public works.

For the needs of National Defense we must have a Corps of Engineers in the army whether or not its duties include civil work. Military Engineers have demonstrated, over a period of one hundred years, that they are competent and qualified to handle river and

harbor work efficiently and economically. River and harbor projects require the national viewpoint which is developed automatically and deliberately by frequent transfer of officers from one part of the country to another. Their salaries are the same on civil work as on military work, and are much less than those of civil engineers in private life holding positions of similar responsibility. No set of men in public life can be found who are freer from political influence than the officers of the Corps of Engineers. To develop capacity for wartime leadership the officers of the Corps of Engineers must have peacetime experience requiring major decisions. The present arrangement assures a fair, economical, and efficient administration of its river and harbor work by a group of engineers with a developed national viewpoint. Moreover, the army to that extent is returning dividends to the nation and a portion of its personnel is getting valuable preparation for war duties not possible of duplication in any other way.

* * * * *

In view of the past history of this improvement it is believed that it would be difficult to prevent political considerations from governing the assignment of civilians to all such positions as district engineers or other important executive positions. It is impossible not to believe that the Corps of Engineers would soon be eliminated from such work. This appears to be the main object of the proposed legislation. This separation would not only be uneconomical but it would also have a serious effect upon the national defense. The problem of national defense is one which pertains particularly to

the War Department. The whole theory of our Defense Act is based on a small regular army and a large trained reserve.

During the last war, the role of the engineers was a very important one and called for engineering skill and experience of an extremely diversified kind. In future wars it will probably be even more important and far more complicated. In order that this country may have a properly balanced force for war, the army must have a competent and versatile Corps of Engineers to take up with the greatest promptness, the problems which, on the breaking out of war, will be presented to it, and to serve as the nucleus of the great military engineer organization which must later be built up. The only way in which a Corps of Engineers, capable of performing such varied service, can be maintained, is by providing the officers of the Corps with sufficient work in time of peace to give them practical experience with large engineering, construction and supply problems, and to enable them to acquire a broad acquaintance with the civil engineers of the country from whom the vastly enlarged war personnel must be drawn. Many of the officers of the Corps of Engineers in charge of civil works have done much toward fostering cooperation in national defense among the engineers of the country.

One of the advantages of the present system comes from the contacts and associations with the best engineers in the country, who form the pool from which the Corps of Engineers must be expanded in war time. In the solution of large problems of supply, organization, and construction which arose during the World War, the experience

which officers of the Crops of Engineers had gained on civil work was of great assistance. Furthermore, their acquaintanceship with the civil engineers of the country who volunteered so freely, resulted in a more efficient employment of those who entered the army.

* * * * *

DWIGHT F. DAVIS,
Secretary of War.

Mailed 2–11–28, 5 p. m.

U. S. GOVERNMENT PRINTING OFFICE: 1928

SUPREME COURT OF THE UNITED STATES.

No. 339.—October Term, 1931.

Southern Pacific Company, Petitioner,
vs.
The United States.
} On Writ of Certiorari to the Court of Claims.

[March 14, 1932.]

Mr. Justice Roberts delivered the opinion of the Court.

The petitioner operates a railway system comprising certain lines of railroad constructed with the aid of Congressional grants of public lands. During the years 1920-1923, both inclusive, the company, upon transportation requests issued by the War Department, the Navy Department, and the Marine Corps of the United States, transported military prisoners and their guards; officers of the reserve corps traveling to and from encampments under orders of the Secretary of War; members of the nurse corps of the navy; engineer officers of the War Department on duty in connection with river and harbor works and the California Debris Commission; escorts accompanying the remains of deceased soldiers; enlisted men changing station or returning thereto; officers of the army proceeding to their homes after date of their retirement; and stranded enlisted men of the navy traveling back to their proper stations. In settling petitioner's accounts for transportation so furnished, or in adjusting those previously settled, the United States, through its disbursing officers, made or required petitioner to make certain deductions from the amounts due at regular commercial fares, on the ground that the persons transported were troops of the United States within the meaning of the applicable land grant laws, appropriation acts, and land grant equalization agreements. Payment on this basis was accepted under protest. Suit was instituted in the Court of Claims to recover the amounts deducted, the claim being that none of the persons with respect to whose transportation deduction had been made came within the purview of the statutes and agreements requiring the company to carry troops of the United States at

reduced fares. The Court of Claims entered judgment for the petitioner on certain items of the claim, but as to most of them found in favor of the United States. A petition for certiorari was filed, and the writ was granted, "limited to the question raised with respect to engineer officers of the War Department in performing duties in time of peace in connection with rivers and harbors improvements and the meetings of the California Debris Commission".

A portion of what is now petitioner's railroad system was granted aid by the act of July 27, 1866 (14 Stat. 292). The act made the railroad a post route and military road, the charges of which should be subject to such regulations as Congress might impose.[1] With respect to the line in question the army appropriation acts provide that such railroad "having claims against the United States for transportation of troops and munitions of war and military supplies and property . . . shall be paid out of the moneys appropriated by the foregoing provisions only on the basis of such rate for the transportation of such troops and munitions of war and military supplies and property as the Secretary of War shall deem just and reasonable under the foregoing provision, such rate not to exceed 50 per centum of the compensation of such Government transportation as shall at that time be charged to and paid by private parties to any such company for like and similar transportation; and the amount so fixed to be paid shall be accepted as in full for all demands for such service."[2]

As respects another division of petitioner's system the grant of lands was under the act of July 25, 1866 (14 Stat. 239, 241), which

[1]Act of July 27, 1866; 14 Stat. 292, Sec. 11. "*And be it further enacted,* That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other government service, and also subject to such regulations as Congress may impose restricting the charges for such government transportation."

Sec. 18 of the same act made the same provision respecting the Southern Pacific Railroad, now a part of petitioner's system.

[2]See the Army Appropriation Act for the year ending June 30, 1921, approved June 5, 1920 (41 Stat. 948, 959). The act contains the following proviso: "That nothing in the preceding provisos shall be construed to prevent the accounting officers of the Government from making full payment to land-grant railroads for transportation of property or persons where the courts of the United States have held that such property or persons do not come within the scope of the deductions provided for in the land-grant Acts: . . . ".

provided: "And said railroad shall be and remain a public highway for the use of the government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States". This clause was construed in *Lake Superior & Mississippi R. R. Co.* v. *United States*, 93 U. S. 442, as conferring only the free use of the roadbed as a highway. Under appropriate legislation following that decision payment of compensation has been made by the United States for transportation of property and troops at fifty per cent. of that charged to private parties. (See *United States* v. *Union Pacific R. R. Co.*, 249 U. S. 354).

The Government and certain railroads have entered into so-called equalization agreements and joint arrangements for military transportation which provide for deductions additional to the fifty per cent. required by the statutes. The petitioner is a party to these agreements, which have been construed generally as applying to charges for transportation of the same classes of persons to whom the land-grant rates would be applicable. Both the petitioner and the Court of Claims have so treated these agreements and arrangements, and our decision under the statutes may be taken to apply to deductions under these contracts.

This court had occasion in the *Union Pacific* case (*supra*) to pass upon the meaning and scope of the phrase "troops of the United States" as used in the land-grant legislation and in the agreements. What was there said is apposite to expenditures under appropriation acts which use the same phraseology and apply to transportation over petitioner's railroad. The opinion in that case demonstrates that the word "troops" was intentionally used in contradistinction to the words any persons in the service of the United States, or their equivalent, and holds that the word "troops" had, at the time of the passage of the land-grant acts, and ever since has had, an established meaning, namely, "soldiers collectively—a body of soldiers".

Thus the test is whether the person to be transported is one of such a collective body of soldiers. The reduced rate is applicable to a person so described, although he may not be traveling as part of a detachment or moving body of men. *Illinois Central R. R. Co.* v. *United States*, 62 C. Cls. 61; *Chicago, Rock Island & Pacific Ry. Co.* v. *United States*, 58 C. Cls. 33. In the *Union Pacific* case it was pointed out that although certain persons

were properly characterized as members of the army and as having official relation thereto, they could not, at the time of their transportation, be classified as part of the troops of the United States, as, for example, a furloughed soldier returning to his station, or retired soldiers en route to their homes after retirement.

The narrow question presented for decision is whether engineer officers cease to be members of the military forces or "troops of the United States" when they are assigned to duty in connection with the improvement of rivers and harbors or the work of the California Debris Commission.

While, as is argued by the United States, river and harbor improvement has in one aspect a bearing upon the military defence of the United States, obviously the principal purpose of this work is the promotion of commerce and transportation, by maintaining and deepening channels, and constructing dikes, jetties, and other works which effect the improvement of navigation generally.

The California Debris Commission was created by the Act of March 1, 1893 (27 Stat. 507), which authorized the appointment of a commission from officers of the corps of engineers of the United States army, whose duty was to mature and adopt a plan or plans to improve the navigability of the Sacramento and San Joaquin rivers in California, deepen their channels, and protect their banks, with a view of preventing encroachment and damage from debris resulting from mining operations, natural erosion, or other causes, and restoring as far as practicable the navigability of the rivers to the condition existing in 1860. The Commission was to permit mining by hydraulic processes, provided this could be done without injury to the navigability of the rivers or to the lands adjacent thereto. Quite evidently this work is of a non-military nature and in the interest of commerce and navigation.

Conceding that engineer officers of the United States army perform a true military function when engaged in work on the military defences of the United States, and, when so engaged form a part of the nation's troops, we are of opinion that their activity in connection with rivers and harbors work and the California Debris Commission is non-military in character, and falls within the same category as that of many other employees and officials of the War Department, the nature of whose service excludes them from classification as part of the "troops of the United States".

Congress has recognized that such service by engineer officers is non-military. For example, in the Army Appropriation Act for 1930, approved February 28, 1929 (45 Stat. 1349, 1374, 1379), Title I deals with military activities and expenses of the War Department incident thereto. Title II has to do with non-military activities of the War Department, and under the subtitle "Corps of Engineers" makes appropriation for defraying the expenses of the California Debris Commission, and also for the rivers and harbors improvement work of the United States to be carried on under the control and supervision of the Chief of Engineers of the War Department. The Secretary of War, in his annual reports, under the caption "Civil Activities of the Corps of Engineers", mentions rivers and harbors work and that of the California Debris Commission.[3]

The Court of Claims held the view that as respects engineer officers employed in the capacities mentioned the Government was entitled to the deduction of fifty per cent. under the terms of the land-grant acts and appropriations pursuant thereto and other deductions under the equalization agreement and joint military arrangements. For the reasons given we are of the contrary opinion, and accordingly reverse the judgment of the Court of Claims and remand the cause for further proceedings in conformity herewith.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[3]Typical reports are that for 1928, p. 25 *et seq.*, and that for 1930, pp. 9, 16, 17.